



EN

GOVERNING COUNCIL
101st session
Rome, 8-10 June 2022

UNIDROIT 2022
C.D. (101) 21
Original: English
September 2022

REPORT

(prepared by the Secretariat)

TABLE OF CONTENTS

Item 1:	Adoption of the annotated draft agenda (C.D. (101) 1 rev. 4)	3
Item 2:	Appointment of first and second Vice-Presidents of the Governing Council (C.D. (101) 1 rev. 4)	3
Item 3:	Reports	4
	(a) Annual Report 2021 (C.D. (101) 2)	4
	(b) Report on the UNIDROIT Foundation (C.D. (101) 3)	5
Item 4:	Proposals for the New Work Programme for the triennial period 2023-2025 (C.D. (101) 4 rev.)	6
	(a) Legal nature of Voluntary Carbon Credits	10
	(b) Private Law and Contemporary Health Research: Intellectual Property issues in the field of Personalised Medicine	12
	(c) UNIDROIT Principles of International Commercial Contracts and investment contracts	15
	(d) Corporate Sustainability Due Diligence in Global Value Chains	18
	(e) Development of an Agricultural Financing Legal Guide	21
	(f) Global Value Chains: Governance issues and Digital challenges	22
	(g) Standard-Essential Patents (SEPs)	24
	(h) Digital Transformation, Data Governance and Artificial Intelligence	24
	(i) Access to Justice in Environmental Matters	24
	(j) Preparation of other Protocols to the Cape Town Convention: Renewable Energy equipment	24
Item 5:	Ongoing legislative activities	25
	(a) Model Law on Factoring (C.D. (101) 5)	25
	(b) Best Practices for Effective Enforcement (C.D. (101) 6)	26
	(c) Digital Assets and Private Law (C.D. (101) 7)	28
	(d) Model Law on Warehouse Receipts (C.D. (101) 8)	32

	(e) Bank Insolvency (C.D. (101) 9)	35
	(f) Legal Structure of Agricultural Enterprises (C.D. (101) 10)	37
	(g) Principles of Reinsurance Contracts (C.D. (101) 11)	39
	(h) Private Art Collections (C.D. (101) 12)	40
Item 6:	International Interests in Mobile Equipment	42
	(a) Implementation and status of Cape Town Convention and the Aircraft Protocol	42
	(b) Implementation and status of the Luxembourg Rail Protocol and of the Space Protocol (C.D. (101) 13)	42
	(c) Implementation and status of the Protocol on Matters specific to Mining, Agricultural and Construction Equipment (MAC Protocol) (C.D. (101) 14)	44
	(d) Appointment of a Supervisory Authority for the MAC Protocol registry (C.D. (101) 15)	45
Item 7:	International Protection of Cultural Property: implementation and status of the 1995 Convention (C.D. (101) 16)	49
Item 8:	UNIDROIT Correspondents (C.D. (101) 17 rev. 2)	50
Item 9:	UNIDROIT Academy (C.D. (101) 18)	51
Item 10:	Communications strategy and social media outreach (C.D. (101) 19)	54
Item 11:	Administrative matters: Preparation of the draft Budget for the 2023 financial year (C.D. (101) 20)	56
Item 12:	Date and venue of the 102nd session of the Governing Council (C.D. (101) 1 rev. 4)	57
Item 13:	Any other business	57
ANNEXE I	LIST OF PARTICIPANTS	
ANNEXE II	ANNOTATED AGENDA	64

1. *The President of UNIDROIT, Ms Maria Chiara Malaguti*, opened the 101st session, welcoming all the Members and Observers of the Governing Council, and expressing appreciation for the number of participants attending in-person. Before continuing her introductory remarks, she passed the floor to the Chair of the UNIDROIT General Assembly for the period of 2021-2022, Minister Plenipotentiary Stefano Zanini (Italy), thanking him for his presence.

2. *The Chair of the General Assembly* welcomed all the participants and expressed his gratitude to the President and to the UNIDROIT Secretariat for the organisation of the session. As a representative of the host country of UNIDROIT, he recognised the invaluable contribution provided by all the distinguished Members of the Governing Council. He recalled that 2022 was an important year for the Institute, as it had resumed its ordinary meeting activities since the advent of the COVID-19 pandemic.

3. The Chair of the General Assembly noted that the Governing Council would be invited to take stock of the results that had been achieved during the 2020-2022 Work Programme, but would also be invited to discuss the new Work Programme for 2023-2025. He highlighted that new, strategic projects would be presented during the 101st session of the Governing Council. He recognised the growing importance of soft law instruments as a general preference in international law making, particularly in areas that were subject to rapid changes due to the progress of technology. In conclusion, restating the support and cooperation of Italy, as the host country, he wished all participants a successful session.

4. In her opening address, *the President of UNIDROIT* emphasised the importance of the 101st session of the Governing Council for the approval of the new Work Programme and for the acknowledgment of the development of the projects that had been included in the 2020-2022 Work Programme. In particular, a first draft of the Model Law on Factoring had been prepared and substantive progress had been made for the development of the Master copy of the Principles on Digital Assets and Private Law. She also drew the Council's attention to the resumption of in-person Working Group meetings, as well as side events and conferences at the Institute that had taken place since September 2021.

5. She expressed her gratitude for the quantity and quality of the new project proposals received, and noted that many of them had been proposed by international organisations that had not yet collaborated with the Institute. In conclusion, she thanked all the Members of the Governing Council for their collaboration, and in particular the Chairs of the Working Groups for their active participation in the achievements that would be reported.

Item 1: Adoption of the annotated draft agenda ([C.D. \(101\) 1 rev. 4](#))

6. *The Governing Council adopted the agenda as proposed in document C.D. (101) 1 rev. 4.*

Item 2: Appointment of first and second Vice-Presidents of the Governing Council ([C.D. \(101\) 1 rev. 4](#))

7. *The President* recalled the Rules of Procedure for appointing the First and Second Vice Presidents of the Governing Council, in accordance with article 6.6 of the UNIDROIT Statute.

8. *The Governing Council appointed Mr Arthur Hartkamp, Doyen of the Council, as First Vice-President, and Mr Antti Leinonen as Second Vice-President, both of whom would serve in these positions until the 102nd session of the Governing Council.*

Item 3: Reports**(a) Annual Report 2021 ([C.D. \(101\) 2](#))**

9. *The Secretary-General of UNIDROIT, Mr Ignacio Tirado* welcomed all the participants, expressing satisfaction for the number of Governing Council Members and Observers attending the session in person. He informed the Council that Mr Alfonso-Luís Calvo Caravaca was excused for health reasons, and that Ms Bénédicte Fauvarque-Cosson would be represented by Mr Jean-François Riffard (participating remotely) in her absence due to unforeseen professional commitments. Mr Tirado then summarised UNIDROIT's work in 2021 referring to document C.D. (101) 2.

10. He recalled the impact that the COVID-19 pandemic had had on the activities and decisions taken at UNIDROIT in 2021. The necessary adaptation had led to a new focus and reprofiling of actions to maximise outputs whilst minimising the use of resources. Six high level priority projects had been conducted simultaneously, and particular efforts had been put into the finalisation of the legal infrastructure required to implement the Protocol to the Convention on International Interests in Mobile Equipment (Cape Town Convention) on Matters specific to Mining, Agricultural and Construction Equipment (the "MAC Protocol"). He congratulated the Secretariat staff for its uninterrupted service despite the circumstances.

11. He emphasised that 2021 had been a year of consolidation, with no major changes to report. Great efforts had been made towards maintaining a budgetary balance, thanks to the steadiness of the contributions of Member States. UNIDROIT had continued with the plan, set out in early 2020, to employ the savings that were originally allocated to travel to improve its infrastructure. In particular, the IT service had been reinforced, and hybrid meetings were now being held in all conference rooms, rather than solely in the Library. While in-person meetings were indeed irreplaceable to address certain matters, the use of technology had also been used to streamline the projects, resulting in ten Working Group meetings, bolstered with over 40 intersessional meetings, five specialised workshops and seven drafting committee sessions, involving in total over 200 experts. He highlighted the full transparency in the development of UNIDROIT's instruments, noting that public records had been provided of all the work conducted.

12. Recalling the celebration of the 100th session of the Governing Council in 2021, Mr Tirado evoked the special events that had been organised in Bologna and noted the special nature of UNIDROIT's governance body, as designed in 1926. Emphasising the participation of remarkable legal experts over the years and highlighting both the academic excellence and independence of the Governing Council Members, he reiterated UNIDROIT's gratitude for the participation of outstanding legal professionals in Bologna in the celebratory conference that had taken place in the Oratorio of San Filippo Neri.

13. Insofar as the implementation and dissemination of the UNIDROIT's instruments was concerned, the Secretary-General underlined the progress that the MAC Protocol Preparatory Commission had made in the completion of the first version of the regulations. Most of the work to issue a tender for a new registry had been undertaken in 2021 and finalised in 2022. The Luxembourg Protocol to the Cape Town Convention on Matters Specific to Railway Rolling Stock (the "Rail Protocol") had also made significant progress towards entry into force, with the ongoing parliamentary process for ratification by Spain and South Africa's signature. The Flagship Protocol to the Cape Town Convention on Matters Specific to Aircraft Equipment (the "Aircraft Protocol") had shown extraordinary resilience and, notwithstanding the difficulties impacting the regular borrowers under the Aircraft Protocol by the pandemic, the success of the instrument had withstood the test as a mechanism to foster reorganisation agreements of those airlines that had been deemed viable by creditors. The COVID-19 pandemic had stimulated the discovery of new interesting and previously untested forms of application of the Cape Town Convention, which, instead of being merely a system of creditor protection by quick enforcement, it had operated in a manner that had put creditors in a

strong negotiating position to help restructure the debt of debtors whose viability had been positively assessed.

14. As far as accessions were concerned, the Secretary-General informed the Council that one more country had acceded to the Cape Town Convention in 2021, amounting to a total of 83 States party. In addition, three new countries had acceded to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (the “1995 Convention”) in 2021. One more country was expected to sign the 1995 Convention in 2022, which would amount to a total of 53 States party.

15. As for the promotion of other instruments, the Secretary-General noted that the UNIDROIT Principles for International Commercial Contracts (UPICC) had been presented in at least six events. Furthermore, he announced that the translation of the ELI/UNIDROIT Model European Rules of Civil Procedure into French was approaching its completion, and that a version in Spanish had already been published. The UNIDROIT/IFAD Legal Guide on Agricultural Land Investment Contracts (the “ALIC Legal Guide”) had also been translated into French and was expected to be launched in 2022. A new proposal on the strategy for the implementation and dissemination of UNIDROIT instruments would be prepared for the next session of the Governing Council.

16. The Secretary-General acknowledged the remarkable work done for the development of the six high priority projects, particularly the development of the Model Law on Factoring and the Model Law on Warehouse Receipts, as well as the Digital Assets and Private Law project. Lastly, Mr Tirado drew the Council’s attention to the progress of the projects on Legal Structure of Agricultural Enterprises and Bank Insolvency, noting the latter’s success and the fruitful partnerships with the Bank for International Settlements in Basel, the International Monetary Fund, the World Bank, and several central banks, including the European Central Bank, the Central Bank of Malaysia, the Bank of China, and Bank of India among others.

17. *Mr Niklaus Meier* expressed his gratitude for the transparency in the work undertaken and thanked the Secretariat for making all the documents available online.

18. *Mr Jorge Sánchez Cordero* extended his congratulations to the Secretary-General for the report of the activities that had been realised in the difficult circumstances of the pandemic.

19. *The Governing Council took note of the Secretary-General’s report on the main features of the legislative and non-legislative work of the Institute during 2021 and expressed its satisfaction with the achievements attained. Further, the Council expressly conveyed its gratitude to the Secretariat for the hard work in very difficult circumstances and for the transparency deployed in the conduct of its activities.*

(b) Report on the UNIDROIT Foundation ([C.D. \(101\) 3](#))

20. *Legal Officer Ms Myrte Thijssen (UNIDROIT Secretariat)* introduced the UNIDROIT Foundation’s Annual Report for 2021. She recalled that the Foundation had been established as a not-for-profit organisation in 1996, to support the work of UNIDROIT by promoting its instruments, facilitating complementary research, organising seminars and other educational programmes, developing best practice information systems and fundraising activities. The Foundation was the organisation through which non-governmental organisations could demonstrate their support to the activities of UNIDROIT. It was overseen by a Board of Governors consisting of twelve members and its main sources of income were donations and annual fees collected from members of the UNIDROIT Alumni Association.

21. *Ms Louise Gullifer (Member of the Board of Governors of the Foundation)* elaborated on the main developments of the two substantive projects supported by the Foundation, which were both managed under the auspices of the Cape Town Convention Academic Project. The project on Best Practices in the Field of Electronic Registries (BPER) had finalised its first deliverable in 2021, in the

form of a Guide on Best Practices for Electronic Collateral Registries, which had been launched as a side event to the Council's 100th session. The project group was now focused on developing a Guide on Best Practices for Electronic Business Registries. To this end, a first workshop had been held in Cambridge in 2021 and a consultant had been hired in May 2022.

22. The second project concerned work on a framework for conducting Economic Assessments of International Commercial Law Reform, which was an interdisciplinary project involving both lawyers and economists. *Ms Gullifer* noted that a formula with variables had been developed to assess the economic impact of international commercial law reforms, both *ex ante* and *ex post*. The project group was now developing a guide that would provide guidance on how to use the formula in practice. A preliminary draft of the guide had been discussed during a workshop held in March 2022, during which the project group had also sought to collect technical insights from economists. She noted that the next meetings for both projects would take place in September 2022, in Cambridge, alongside the Annual Cape Town Convention Academic Conference.

23. Regarding the Foundation's work in the area of education and research, she explained that it had facilitated three internships at the UNIDROIT Secretariat in 2021, thanks to the support of the United Rule of Law Appeal (UROLA), law firm FELDENS MADRUGA, and the UNIDROIT Alumni Association. In addition, the Foundation had facilitated the UNIDROIT COVID-19 Essay Competition, in partnership with Stibbe. Another Essay Competition had been launched with the support of the International Law Institute on 'UNIDROIT and Sustainable Development' in 2022.

24. *Ms Gullifer* concluded her remarks by informing the Governing Council of a generous donation (€ 200,000) from a Dutch foundation, as a result of the remarkable efforts of Foundation Board member Professor Carla Sieburgh in promoting the work of UNIDROIT in The Netherlands. The donation would be used for the benefit of the UNIDROIT Library; to purchase legal literature, facilitate the Library's digitisation efforts, and to create a new Library annexe. *Ms Thijssen* added that the Foundation would welcome the support from Governing Council Members in promoting the work of UNIDROIT and the Foundation's fundraising activities.

25. *The President of UNIDROIT* noted that the new Library space would also be used to host events such as the UNIDROIT International Summer School.

26. Following a question by *Mr Henry Gabriel*, the *Secretary-General* explained that the Foundation had not yet established a permanent endowment given the lack of unearmarked funding and the current financial environment. However, a Sir Roy Goode Scholarship had been established within UNIDROIT, which was used to fund six- to nine-month scholarships with the Secretariat. *Ms Gullifer* confirmed that the Foundation focused on raising funds for specific projects and activities, in line with the interests of potential donors.

27. *Ms Kathryn Sabo* welcomed the expected funding for the Library and expressed gratitude to the Foundation for its ongoing efforts in supporting the work of UNIDROIT. *Mr Niklaus Meier* also thanked the Foundation for its report and presentation.

28. *The Governing Council took note of the report of the UNIDROIT Foundation, showed appreciation for its good work and commended the Foundation's successful fundraising activities.*

Item 4: Proposals for the New Work Programme for the triennial period 2023-2025
([C.D. \(101\) 4 rev.](#))

29. *The President* opened the discussion for Item 4 on the Agenda with regard to Proposals for the New Work Programme for the triennial period 2023-2025.

30. *The Secretary-General* expressed his appreciation for the nine proposals the Secretariat had received from different proponents, including States, international organisations, international financial institutions, representatives from the industry, and universities. Many of them had extraordinary practical potential, as well as interesting theoretical content, with a number of the proposals representing a natural follow-up of the projects included in the 2020-2022 Work Programme. He noted the importance of identifying synergies among the current and new projects in order to reduce the costs for the development of the new Work Programme through, for example, sharing common experts among the different projects. Recalling that the Institute had been working on six projects simultaneously, which corresponded to its full capacity with the available resources, it would only become feasible to begin any new project once one of the existing projects had been finalised or when new resources became available. Inviting the Governing Council Members to consider the timeline graph included in page 11 of document C.D. (101) 4 rev., which highlighted when each of the existing projects were expected to be finalised, he went on to illustrate its content.

31. The Model Law on Factoring, for instance, was expected to be finalised in May 2023, however work would probably continue for the development of a commentary or guide to enactment to aid implementation, requiring two additional Working Group meetings. The Secretary-General noted that a similar situation would be expected for the finalisation of the Model Law on Warehouse Receipts: the finalised draft, expected by the next session of the Governing Council, was to be sent for subsequent negotiations under the framework of the United Nations Commission on International Trade Law (UNCITRAL), and a guide to enactment expected to be developed by the UNIDROIT Working Group in parallel to those negotiations. The Digital Assets and Private Law project was also expected to be finalised by the next session of the Governing Council in 2023, whereas the projects on Best Practices for Effective Enforcement, Bank Insolvency and Legal Structure of Agricultural Enterprises would, in principle, be finalised in 2024.

32. The Secretariat also expected to benefit from additional human resources for the development of the new Work Programme, as the Institute would be incorporating two new legal officers to work as secondees for two to three years, appointed by the government of China and the government of Italy respectively. To conclude, he queried whether the Governing Council could give the Secretariat more flexibility with regard to introducing new proposals during the upcoming Triennium if necessary.

33. *Mr Arthur Hartkamp* noted how impressed he had been with the new Work Programme presented for discussion, and how he had never seen such an extensive presentation of realistic and topical proposals during the last decades. He noted that the Institute could try to develop as many of the projects proposed as possible, regardless of whether or not they would take more than three years to be developed.

34. *The Secretary-General* clarified that the inclusion of a certain project in the Work Programme did not mean that it would have to be developed immediately. He noted that each project would have a different level of priority, and would eventually be upgraded when needed.

35. *Ms Stefania Bariati* thanked the Secretary-General for the work proposed for the next Triennium. She noted that the pandemic had, to a certain extent, enhanced UNIDROIT's workload and capabilities, and that the topics proposed for the new Work Programme were interesting and very relevant. She recognised that not all of them had been proposed with the same level of priority and agreed with the request for more flexibility, to permit the re-opening of discussion in the future to work on projects that responded to the concrete needs of stakeholders.

36. *Mr Gabriel* invited the Governing Council to bear the three categories of priority that could be established for the new projects (low, medium, and high) in mind when discussing the new project proposals.

37. *Mr Hans-Georg Bollweg* expressed his gratitude to the Secretariat for its commitment to continue working on all the projects that had been included in the 2020-2022 Work Programme despite the complexities created by the pandemic. He emphasised that the continuation and finalisation of the ongoing projects should have priority and the adoption of new projects should not create any risk. Regarding the demand for more flexibility, he agreed with the proposal of the Secretary-General.

38. *Mr Sánchez Cordero* supported the proposal for more flexibility in the definition of the Triennium Work Programme as new issues would be emerging in the international field.

39. *Ms Sabo* noted how document C.D. (101) 4 rev. contained an impressive collection of ideas and agreed with the proposal for more flexibility. She expressed her support for the continuation of the current six projects in the 2023-2025 Work Programme and agreed with the Governing Council accessing new project proposals even in the course of the three-year plan. She made some remarks on the already ongoing projects. With respect to the Model Law on Factoring, *Ms Sabo* asked for clarification regarding the nature of the instrument that would be developed after the Model Law had been adopted, since document C.D. (101) 5 suggested that it could be either an article-by-article commentary or a guide to enactment. She queried whether the nature of the instrument would have an impact on the proposed timeline. Regarding the Model Law on Warehouse Receipts project, *Ms Sabo* raised a similar question regarding the nature of the complementary instrument that would be developed. Further, she expressed her concern with the proposal to continue the work in parallel with the work carried out by UNCITRAL for the approval of the Model Law. While recognising that UNIDROIT and UNCITRAL could have common experts participating in the decision-making process, she noted that the process for approval by UNCITRAL could still substantially modify the draft Model Law. Therefore, she questioned the usefulness of UNIDROIT continuing the work to develop a commentary or guide to enactment.

40. *Mr Tirado* thanked *Ms Sabo* for her insightful remarks and noted that both Working Groups had reflected upon the challenges of developing a guide to enactment for not completely finalised instruments. He noted, however, that the work at UNIDROIT could start by looking at the non-controversial sections.

41. In his capacity as Chair of the Model Law on Factoring Working Group, *Mr Gabriel* informed that the Working Group had anticipated that one more year would be necessary to develop a complementary guide, which would include section-by-section commentaries.

42. In her capacity of Chair of the Model Law on Warehouse Receipts Working Group, *Ms Eugenia Dacoronia* recalled that four sessions of the Working Group had been held between 2020-2022 and several draft chapters had been prepared. She emphasised the need to maintain the high priority level in the 2023-2025 Work Programme to develop a guide to enactment for the adequate implementation and use of the Model Law.

43. *The representative of UNCITRAL* expressed his gratitude for the invitation to participate in UNIDROIT's Governing Council and extended his congratulations to the Secretary-General and the UNIDROIT staff for the preparation of the new Work Programme proposal. Regarding the next steps in the joint UNCITRAL/UNIDROIT Model Law on Warehouse Receipts project, he referred to the efforts made by the UNIDROIT Working Group to address in advance typical clashes between civil and common law. Based on UNCITRAL's practice, he clarified that the Model Law would not be accompanied by a commentary, but by a guide to enactment.

44. He informed that both Secretariats had agreed that the UNIDROIT Working Group would still meet twice before submitting the final draft for UNIDROIT's Governing Council consideration. Only afterwards, the final draft would be submitted to a UNCITRAL Working Group. He explained that in the time between the final UNIDROIT Working Group session and the first UNCITRAL Working Group

session, a first draft of the guide to enactment would be prepared by UNIDROIT and handed over to the UNCITRAL Working Group in view of its first deliberations in the fall of 2023 or, at the latest, the draft guide to enactment would be prepared for UNCITRAL's Working Group second session.

45. *Ms Sabo* expressed her thanks for the clarifications regarding the guide to enactment for the Model Law on Warehouse Receipts. With regards to the Model Law on Factoring, she queried if the legislative guide mentioned by Mr Gabriel would be similar to a guide to enactment.

46. *The Secretary-General* clarified that the complementary instrument would not be a usual guide to enactment, but would have more detailed commentaries and explanations to take into account the complexity of the Model Law on Factoring.

47. *Mr Jean-François Riffard* queried to what extent substantive issues previously addressed by the UNIDROIT Working Group could be modified by UNCITRAL's Working Group.

48. *The Secretary-General* reiterated that both Secretariats had been working closely to minimise the risk of important amendments being made to the draft Model Law on Warehouse Receipts. However, in the event that UNCITRAL's Commission would substantially modify the draft Model Law, he invited the Governing Council to reflect if it would be necessary to reopen the discussion under the auspices of UNIDROIT, to ratify the decisions adopted by UNCITRAL.

49. *Mr Antti Leinonen* suggested to initiate work on the guide to enactment in 2024, when the draft Model Law on Warehouse Receipts would have already been discussed within UNCITRAL.

50. *The Secretary-General* stated that Mr Leinonen's proposal was feasible, however UNIDROIT risked dispersing a Working Group that had been functioning well and at a good speed. He underlined that the UNIDROIT Working Group could start developing the non-controversial sections of the guide to enactment first.

51. *A representative of UNCITRAL, in his capacity of Co-Chair of the Working Group*, agreed that there were certain topics that could be addressed in the guide to enactment regardless of what the policy decision at UNCITRAL would be. He clarified that UNCITRAL and UNIDROIT had had previous experience with the unpredictability in joint projects. He noted three projects that could serve as example: the Convention on the Contract for the International Carriage of Goods by Road (CMR Convention); the first Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict; and the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade.

52. *Another representative of UNCITRAL* informed that UNCITRAL had made arrangements for Working Group I on Micro, Small and Medium-sized Enterprises to address the Model Law on Warehouse Receipts over one or two sessions. She noted that it would be useful to receive a package of the draft Model Law accompanied with some elements of the guide to enactment. She illustrated UNCITRAL's recent practice of adopting instruments "in principle", when complementary instruments are being finalised.

53. *Ms Sabo* suggested following the procedure adopted for the finalisation of the UNIDROIT, UNCITRAL, and Hague Conference on Private International Law (HCCH) Legal Guide to Uniform Instruments in the Area of International Commercial Contracts, with a focus of sale. She added that this discussion could continue during the 102nd Governing Council session.

54. *The President* closed the general discussion regarding the continuation of the Model Law on Factoring and on the Model Law on Warehouse Receipts and passed the floor to the Secretary-General for the introduction of the new proposal received.

55. A detailed summary of the discussion held on some of the proposals found in document C.D. (101) 4 rev. is provided below.

(a) Legal nature of Voluntary Carbon Credits

56. The *Secretary-General* drew the attention of the Governing Council to Document C.D. (101) 4 rev., pages 12-14 and pages 33-37. He presented the proposal received from the International Swaps and Derivatives Association (ISDA), which had garnered support from the Government of Paraguay. The proposal had been brought forward by a taskforce at ISDA responsible for scaling the use of Voluntary Carbon Credits (VCCs).

57. It was recalled that the concept of a carbon credit related to the removal or reduction of one metric ton of carbon dioxide or an equivalent of another greenhouse gas from the atmosphere, in compliance with rules and requirements. It had originally been introduced in the Kyoto Protocol of 1997 to the United Nations Framework Convention on Climate Change and was later established as a cornerstone for policy to reduce greenhouse gas emissions under the Paris Agreement of 2015. While UNIDROIT had not worked in this specific area before, carbon credits were regarded as a key economic tool for sustainable development (an area in which the Institute was already involved in), as they were traded between companies and now were part of several domestic, regional, and global markets with a large amount of transactional volume. The trading of carbon credits had also generated liquidity for companies and had led to a much more sustainable environment overall.

58. The *Secretary-General* went on to explain that carbon credits were mostly issued by public authorities, and that many countries had detailed rules in place for their issuance, transfer, quality, and other regulatory matters. This had led to the creation of many important carbon markets, including the EU, Switzerland, USA, UK, etc. Besides the highly regulated markets of mandatory carbon credits, there was also a market for VCCs that mostly involved private actors, who were unsupervised and functioned under inconsistent requirements. The taskforce to scale VCCs had benefitted from extensive participation from the industry, as well as global regulators such as the World Bank and the Institute of International Finance (IIF).

59. The taskforce had identified a deficiency regarding a lack of legal certainty in trading VCCs, including, but not limited to: (i) how ownership rights in VCCs, as fungible instruments, could be created and transferred; (ii) what type of security could be taken and enforced; (iii) how VCCs could be treated following an insolvency (including concerning netting); (iv) conflicts-of-laws rules, including jurisdiction and applicable law in case of insolvency and when there was a cross-border element; (v) clarification of legal positions when intermediaries were involved; or the (vi) creation and enforcement of security arrangements over VCCs.

60. The *Secretary-General* noted the synergy the project would have with the work the Institute had conducted in the past on capital markets and intermediated securities, in the form of the Geneva Securities Convention, as well as UNIDROIT's work on Close Out Netting. There were also several similarities with UNIDROIT's ongoing work in the area of Digital Assets and Private Law. In particular, several existing setups of the Digital Assets Working Group could be transitioned to the new project. This would reduce costs, albeit with the addition of experts in the areas of environmental law and carbon trading.

61. *Mr Hideki Kanda* acknowledged the importance of VCCs, especially in light of the importance of the fight against climate change and the attention the subject matter had attracted from public and private entities alike. He recognised that transactions in VCCs were often treated differently from jurisdiction to jurisdiction, and presented several private law related issues which could be resolved through the proposed project. Any project offering additional legal certainty in this area would facilitate the market and would be a useful tool to promote the growth of this industry. He agreed that this work could be an extension of the Project on Digital Assets and that UNIDROIT had also

accumulated significant experience and expertise in the areas of capital markets and intermediated securities, which made the Institute a good fit for a project of this nature.

62. *Mr José Antonio Moreno Rodriguez* also supported the project proposal and noted the importance of offering additional certainty to the stakeholders involved in the VCC markets.

63. *Mr Henry Gabriel* noted the importance of this project, especially in light of the relevance of VCCs to sustainable development. He noted the difficulties in addressing the question of whether VCCs were property or contractual rights and encouraged the future Working Group to approach the matter with caution. While he supported the proposal, he cautioned against addressing this project as an extension of the Digital Assets Project, noting the differences in the type of assets being examined and the importance of the involvement of individuals with expertise in carbon trading and environmental law.

64. *Ms Baiba Broka* expressed support for the project and recognised the synergies with the Digital Assets Project, especially noting the attempts by the markets to tokenise VCCs and trade them on different blockchains. She added that, while it was not a direct extension of the Digital Assets Project, several experts in the Working Group could be asked to participate in the new project.

65. *The representative of UNCITRAL* highlighted that the UNCITRAL Commission had requested exploratory work to be conducted in similar areas to evaluate how UNCITRAL instruments aligned with climate change mitigation, adaptation and resilience goals. As part of this work, public private partnerships and public procurement frameworks had been identified as areas of further research, and issues relating to the trading of carbon credits in voluntary markets had also been raised. In response to such indications, a Working Paper had been prepared by the UNCITRAL Secretariat to be discussed further at the Commission session in July 2022. As such, he noted the importance of a coordinated approach between UNCITRAL and UNIDROIT to address legal issues in this area, similarly to the manner in which the proposals received by the two organisations on areas of the digital economy had been addressed several years ago. It was noted that UNCITRAL's work on carbon credits would mostly have a trade law perspective and was presently in its exploratory phase.

66. *Ms Bariatti* sought clarification on when the proposed project would initiate. It was noted that the project would begin after the conclusion of the Digital Assets Project, which was expected to finish in 2023.

67. *Mr Bollweg* queried whether there were any other international organisations that were already examining these issues, given that carbon markets had existed for a long period of time.

68. *The Secretary-General* noted that, while regulatory rules existed in highly developed economies for carbon trading, these were mostly for mandatory systems and not applicable to VCCs. Additionally, many jurisdictions, particularly those where carbon offsetting projects were based, did not have rules in this area. Additionally, there were no other organisations working particularly on the private law related issues of VCCs, other than the work UNCITRAL had noted they had planned to explore. With regard to UNCITRAL, it was noted that UNIDROIT would coordinate with UNCITRAL on how the two organisations could collaborate in this area. With regard to the link with the Digital Assets Project, the Secretary-General noted that the similarities were mostly in the types of legal questions being asked, and as such, the methodology and some of the experts would be carried forward. Nevertheless, the project would certainly involve new experts.

69. The representative of UNCITRAL noted the possibility of the Governing Council adopting a flexible approach to the scope of work UNIDROIT would undertake in this area, given that it would be discussed at the UNCITRAL meetings in July 2022. He noted that UNCITRAL would revert back to UNIDROIT with the outcome of their meeting and a plan to coordinate the efforts of the two organisations in this area could be finalised accordingly. The representative of UNCITRAL noted the

importance of all international organisations working towards the Sustainable Development Goals and highlighted the special role agencies of the United Nations could play in this regard.

70. *The President* noted the breadth of private law issues which needed to be addressed as part of this project and added that UNIDROIT, with its history and expertise in these areas, was better suited to conduct this type of a project, in close coordination with UNCITRAL. The Secretary-General noted the importance of undertaking this project in a timely manner, and that the timeline which UNCITRAL had envisaged did not align with the expectations of the project proponents and the existing work of the Task force. Additionally, the issues that UNIDROIT had been requested to explore were not legislative, but rather highly specialised private law issues, similar to the ones UNIDROIT was already addressing in its Digital Assets Project. As such, should the UNCITRAL Commission decide to pursue work in this area, UNIDROIT would certainly seek to coordinate its efforts with the UNCITRAL Secretariat.

71. *The representative of the HCCH* noted that ISDA had proposed a similar project to the HCCH in the past but that it had not developed further since. Nevertheless, the HCCH expressed its interest in being involved in the project, especially in light of its interest in areas related to the digital economy, private international law, conflicts of law, and to further its collaboration with UNIDROIT and UNCITRAL. It was also noted that in September 2022, the HCCH would organise a large conference to further explore issues related to the digital economy, with a particular emphasis on tokenisation of assets, including VCCs.

72. *Mr Meier* queried the level of priority proposed to be accorded to this project, given that it would only start once the Digital Assets project finished, and given that the Institute already had a very intensive Work Programme. *The Secretary-General* confirmed that work on this project would start once the Digital Assets Project had finished. Nevertheless, the Governing Council could consider giving the project medium or high priority.

73. *The Governing Council recommended the inclusion of a project to analyse the private law aspects and determine the legal nature of voluntary carbon credits in the 2023-2025 Work Programme, with high priority. While the Council recognised the similarities and linkages of this work to the current UNIDROIT Project on Digital Assets and Private Law, it identified sufficient individual features to recommend that a separate Working Group be established for this new project. This separate Working Group ought to include experts that already form part of the Digital Assets Working Group, as well as experts in the areas of carbon credit trading and environmental law.*

(b) Private Law and Contemporary Health Research: Intellectual Property issues in the field of Personalised Medicine

74. *The Secretary-General* introduced the proposal relating to personalised medicine, which had been submitted by the World Intellectual Property Organization (WIPO). He noted that personalised medicine was a rapidly developing medical model that was expected to shape the future of healthcare, making the subject matter highly relevant and topical. In addition, this proposal presented an opportunity to join forces with the world's leading organisation for intellectual property (IP) matters, with which UNIDROIT had not yet had the pleasure to collaborate.

75. *Ms Thijssen* explained that there was no internationally agreed definition of 'personalised medicine' or 'precision medicine', but that it aimed to identify the most effective medical approach for patients based on genetic, environmental and lifestyle factors. In addition to tailored treatment, it was anticipated to facilitate targeted disease prevention and to reduce adverse effects to medicinal products. Over time, it would allow for a more cost-efficient use of healthcare. The main novelty of personalised medicine was the vast amount of different kinds of data that could be collected and used by different actors through new technologies and tools, such as molecular profiling. This had led to legal questions in different fields of law.

76. In the area of IP, as WIPO had explained in its proposal, one example was how to treat raw data, treatment methods or algorithms used in the field of precision medicine to the extent these would not meet the patent eligibility requirements. Another example concerned the management of IP rights: the variety of actors involved in personalised medicine was liable to result in a web of different protected IP rights held by different stakeholders, that were intertwined for the development of a final treatment or product. This led to questions on ownership and rights of use, as well as issues that could arise in the field of contract law, since the actors involved in the development of personalised medicine were generally connected through contracts. The field of property law was also involved, given that jurisdictions may have different approaches to the ownership, access and use of human materials. Finally, personalised medicine relied on substantial amounts of personal data, which made issues of data protection pertinent. Differences in data protection laws across the world proved challenging in international research collaborations, involving the processing of data from different countries.

77. Ms Thijssen noted the important cross-border component of personalised medicine due to international research collaborations, the involvement of actors from different countries and the global relevance of effective medical products and treatments. She concluded that a collaboration between WIPO and UNIDROIT would allow for a comprehensive analysis of various legal issues in this emerging field. The proposed outcome of the project would be a soft law instrument, in the form of a Legal Guide.

78. *The Secretary-General* noted that the Secretariat had several reasons for supporting the inclusion of this project in the 2023-2025 Work Programme: (i) it would allow UNIDROIT to open a new area of work; (ii) the proposal was timely and the subject matter extraordinary relevant; and (iii) the collaboration with WIPO would allow for the holistic approach that would be needed in this area. He explained that WIPO would analyse matters of primary IP law, while UNIDROIT would focus on private law matters that fit in well with the Institute's expertise, such as the contractual framework for transactions in the field of precision medicine. Finally, he noted that UNIDROIT was expected to welcome an IP expert on secondment for a period of three years and it was hoped that WIPO might be able to share in the costs for the project.

79. *Mr Gabriel* indicated that he had read the proposal closely and with great interest. However, he expressed concerns with the proposal in its current form, noting the lack of UNIDROIT's experience in the field of medicine, which was a highly regulated area, with substantial differentiation across jurisdictions. He also noted that the same applied to IP laws. Questioning the need for international standards, he noted that cross-border data sharing seemed to have proved effective as had been demonstrated during the COVID-19 pandemic. He also queried whether there were any specific new issues that would need to be addressed in matters of contract law. He expressed his reservations and concluded that the proposal would benefit from clarity as to its exact scope and proposed outcome.

80. *Mr Hartkamp* expressed his interest in the subject matter, especially given its novelty. He recognised that medicine was a highly regulated field in many jurisdictions but noted that a part of private law was always left uncovered. He suggested focusing on specific elements, noting that issues of contract law and property law would seem particularly interesting, while data protection matters could perhaps be addressed separately. He asked whether WIPO had elaborated on the reasons for its interest in collaborating with UNIDROIT on this specific topic, whether it had any experience in cooperating with other organisations on matters of private law and what type of collaboration was envisaged.

81. *Mr Bollweg* shared the reservations expressed by Mr Gabriel and, like Mr Hartkamp, was interested in learning more about the reasons why WIPO had shown interest in cooperating with UNIDROIT on matters of IP law.

82. *Ms Jingxia Shi* apologised for not being able to join the session in-person due to the applicable COVID-19 restrictions, and congratulated the Secretariat for the wonderful job done during the last year. She shared the reservations expressed by other Council Members relating to personalised medicine being a highly regulated area that involved issues of public law. She also noted that data protection, and especially the cross-border transfer of data, was a sensitive matter. At the same time, she welcomed the opportunity to explore a new area of work. She concluded that the proposal deserved further elaboration and discussion.

83. *Mr Meier* was pleased to hear about the additional legal officer on secondment with IP expertise who was expected to join the Secretariat for three years. At the same time, he suggested that this additional resource should not pre-empt a decision on the proposed project.

84. *Ms Sabo* expressed her interest in the subject matter, noting that it provided an exciting opportunity to explore a possible new area of work. However, she shared the concerns expressed by others and about the broad scope of the proposed project. She suggested asking the Secretariat to conduct further exploratory work (e.g., a comparative study) in order to identify the private law issues in the area of personalised medicine in more detail, possibly excluding matters of data protection

85. *Mr Ricardo Lorenzetti* shared the reservations expressed by the other Members of the Council. Furthermore, he noted that the topic of personalised medicine was connected to controversial issues in the area of market regulation, data protection, consumer law, human rights and constitutional law (e.g., how to balance the right to property with the right to access to medicine). He wondered to what extent it would be possible to leave such issues aside and focus solely on private contractual arrangements.

86. *Ms Broka* concurred that the topic was very interesting and novel for UNIDROIT. At the same time, she noted that the legal approach in the area of medicine varied widely between jurisdictions, e.g., in Asia, the United States and the European Union, which might have made it challenging to find suitable legal solutions. She proposed to continue exploratory work in order to define a more precise scope for effective collaboration between WIPO and UNIDROIT.

87. *Ms Thijssen* noted that initial exchanges with experts had confirmed the need for legal guidance in the area of precision medicine, on matters of strict IP law and beyond. The Secretariats of both organisations had therefore considered that there would be merit in combining the expertise of WIPO in the area of IP with UNIDROIT's private law expertise to ensure that this complex topic would be considered in a comprehensive manner.

88. *The Secretary-General* agreed that medicine was a highly regulated field but noted that this also applied to other areas in which UNIDROIT had conducted work. Similarly, he acknowledged that UNIDROIT did not have a specific expertise in IP law, but recalled that it had not been specialised in agricultural law nor banking law before beginning work in these fields. Furthermore, he pointed out that it had been proposed that WIPO, rather than UNIDROIT, would focus on the core IP issues, noting that the need to conduct work on personalised medicine arose because IP law had not yet fully adapted to this new reality in many countries. WIPO had shown interest in collaborating with UNIDROIT due to its expertise in contract law and other private-law related areas, all of which were directly connected to elements of IP law (e.g., licensing agreements). He noted that patent law was part of private law and that work in this area would therefore fall within the scope of the Institute's mandate. He also clarified that the reference to the expected additional legal officer was meant to illustrate that the Institute would have the capacity to undertake this project.

89. *The Deputy Secretary-General* noted that WIPO had collaborated with HCCH and that it therefore had experience in working with transnational law organisations.

90. *The President of UNIDROIT* added that WIPO had shown interest in developing collaborations with other organisations. In light of the views expressed by Governing Council Members, she proposed to task the Secretariat to conduct additional research to further define the scope and boundaries of the project.

91. *Mr Gabriel* agreed with the request to clarify the purpose and scope of the project, or otherwise concentrating efforts on other projects.

92. *Mr Leinonen* agreed that the proposal could benefit from additional exploratory work. He also wondered how the additional resource could be most effectively deployed.

93. *Mr Moreno Rodríguez* agreed with the proposal to allow the Secretariat to conduct further exploratory work on personalised medicine.

94. *Mr Hartkamp* agreed with the proposed approach, suggesting to take the discussion on the other proposals for the new Work Programme into consideration.

95. *The Governing Council expressed interest in the topic of personalised medicine and invited the Secretariat to conduct exploratory research together with the World Intellectual Property Organization (WIPO) to further demarcate the scope of possible joint work in the period leading to the next session of the Council.*

(c) UNIDROIT Principles of International Commercial Contracts and investment contracts

96. *The President of UNIDROIT* introduced the proposal relating to the UPICC and investment contracts, which had been submitted by the International Chamber of Commerce's Institute of World Business Law (ICCWBO). She noted that UNIDROIT and the ICCWBO had organised a joint Workshop on Transnational Law and Investment Contracts as a side event to the 101st session of the Governing Council on July 7, 2022. On that occasion, the organisations had also signed a Memorandum of Understanding (MoU). This proposal could be seen as a first expression of intent to intensify the cooperation between the two organisations.

97. *Ms Thijssen* noted that the Governing Council had previously considered conducting work on the UPICC and investment contracts as a category of long-term contracts and that, at the time, had recognised the importance of such work. However, due to the limited time and resources, it had ultimately been decided to focus on several key issues relating to long-term contracts in general, leaving specific considerations for investment contracts for future consideration. This had resulted in an update of the UPICC, leading to the current 2016 version. However, in light of the developments in international investment law over the last decade, the Governing Council was invited to consider undertaking work on investment contracts specifically.

98. *The President* added that some of the reasons that had seen the Council in favour of conducting work on investment contracts in the past were still valid. The UPICC were relevant in the investment context, as had been demonstrated by their use in investment dispute cases. While it was not possible to gain a comprehensive understanding of the extent to which the UPICC were applied in investment arbitration due to the confidentiality of most arbitral awards, it could nonetheless be inferred that at least part of the Principles were being used, and deemed appropriate, in the investment context. She noted that the UPICC may offer a valuable source of law as a manifestation of *lex mercatoria*, which could help separate investment contracts from domestic legislation and place foreign investors on equal footing with State counterparties and local investors. As had also been discussed during the Workshop, certain parts of the UPICC – such as the provisions on good faith and hardship – may have benefitted from adjustments in the investment context. She

noted that there would be merit in a thorough examination of the UPICC by a dedicated Working Group to identify the need and scope of such adjustments.

99. Noting that recent developments provided additional arguments to conduct work on investment contracts, the President remarked the trend of investment agreements containing clauses on Corporate Social Responsibility and sustainability standards, begging the question of how investment contracts could be adapted and modernised accordingly. She noted that the ICCWBO had shown interest in developing model clauses to enhance standardisation, which could add a very useful extra layer to the project. She drew the Council's attention to how recent developments in the area of international investment law had underscored the expected growing relevance of investment contracts. She stressed that the proposed project would not enter into current debates on international investment law and would be limited in scope to the contractual framework only.

100. *Mr Moreno Rodríguez* strongly supported the proposal, and suggested recommending its inclusion in the new Work Programme with high priority. He noted that a joint project with the ICCWBO would be an excellent opportunity, considering its expertise and global reputation in several areas, including arbitration and contracts. As had been discussed during the Workshop, investors and States alike were expected to increasingly rely on investment contracts for investment protection. He noted that the UPICC, even if initially conceived for international commercial contracts, had great potential in this area. Furthermore, he recalled that the ICCWBO had expressed its strong commitment to this project, not only in terms of resources but also by pledging the participation of notable experts in the field. He indicated that this project could be of enormous importance to UNIDROIT, since it would promote the UPICC and was expected to have a high impact on the international investment contract practice. As for the proposed outcome, he suggested that the Working Group analyse several options, such as an enhancement of the UPICC, the development of guidance and/or model clauses.

101. *Mr Gabriel* agreed with Mr Moreno Rodríguez and expressed his support for the proposal. Regarding the possible outcome, he advised against a revision of the UPICC. He stressed the relevance of the Principles as one of the key instruments developed by UNIDROIT and noted that a part of the UPICC would likely not be appropriate in the investment context. He therefore suggested using the UPICC as a basis for developing a new instrument.

102. *Mr Lorenzetti* expressed his support for the project. He noted that the Workshop had clearly presented the current challenges faced by judges and arbitrators in this area, such as conflicts between different laws (e.g., between domestic and international law) and different interpretations regarding the role of the judiciary. In the absence of a comprehensive and coherent legal system, a dialogue between different sources of law was required. He noted that private law could make an important contribution by providing some much needed guidance in this context. In addition, private law could assist in ensuring a systemic approach to new developments such as the inclusion of clauses on environmental protection in investment contracts.

103. *Ms Dacoronia* also supported the project. Like Mr Lorenzetti, she noted that the Workshop had shown that there were several interesting issues that required appropriate solutions. She sought clarification on the proposed priority for this project, whether this was medium or high priority.

104. *Mr Hartkamp* was also in favour of the proposed project. He underlined that the project should take a plurality of interests into account in a balanced manner (e.g., interests of the arbitration community, States, and the general interest).

105. *The President* added that the project would likely also involve other interested international organisations. Furthermore, the project would be conducted in full respect of work undertaken by other organisations in this area.

106. *The representative of UNCITRAL* welcomed the proposal and highlighted the relevance of the project. He noted that there may be synergies with work conducted by UNCITRAL Working Group III on Investor-State Dispute Settlement and other UNCITRAL work, e.g., on public procurement, public-private partnerships and infrastructure projects. He noted the importance of model clauses in the investment context and considered that UNIDROIT and the ICCWBO were ideally placed to develop such clauses. He suggested that model provisions on environmental responsibility and the like may be particularly relevant and would fit well with UNIDROIT's work and ambitions in that area. Finally, regarding the possible outcome, he noted that an interpretation of the UPICC tailored to the context of investment contracts would be very useful for arbitrators.

107. *Ms Shi* agreed with other Council Members and expressed her strong support for the project. She praised the interesting discussions during the Workshop and considered that the proposal could become a very important project for the Institute. She noted that while this area of law included a complex interaction between public and private law and between domestic and international law, the issues to be analysed had been clearly defined. She also indicated that the project fit well with UNIDROIT's work in the area of contract law. She proposed involving an expert from China in the Working Group given China's important role in international investment.

108. *Mr Riffard* supported the project and suggested allocating it a high, or at least medium, priority. He noted that the project was fully in line with the Institute's experience and expertise. Moreover, unification in this area was desirable and seemed feasible.

109. *Mr Sánchez Cordero* strongly supported including the project in the Work Programme with high priority given its importance and close connection to the work of UNIDROIT.

110. *Sir Roy Goode*, attending in his capacity as honorary Governing Council Member observing the session, acknowledged the importance of the project. With regard to the confidentiality of arbitral awards, he suggested encouraging organisations to be transparent about the application of the UPICC in investment dispute cases, noting that some organisations already produced public versions and reports.

111. *The Secretary-General* indicated that, following the MoU with the ICCWBO, UNIDROIT was expected to gain access to information on the use of the UPICC in arbitral awards. Regarding the priority of the project, he explained that the Secretariat had suggested medium priority due to resource constraints. However, the Council could recommend assigning a high priority to this project, which seemed warranted in light of the strong support expressed by Council Members.

112. *Mr Gabriel* suggested that new projects could be allocated a high priority while acknowledging that the work would be deferred due to resource constraints. Ms Dacornia noted that there should be a clear distinction between high and medium priority projects.

113. *The Secretary-General* concluded that the project could be allocated a high priority on the understanding that the Secretariat had a mandate to finish the ongoing projects.

114. *The Governing Council agreed on the importance of the topic and its direct linkage with previous work of the Institute, welcomed the partnership with the International Chamber of Commerce's Institute of World Business Law, expressed its appreciation for the Workshop on Transnational Law and Investment Contracts that had been organised as a side event to the 101st session of the Governing Council, and agreed to recommend the inclusion of this project in the 2023-2025 Work Programme to the General Assembly with high priority.*

(d) Corporate Sustainability Due Diligence in Global Value Chains

115. *The Secretary-General* reported that the Secretariat had received two separate proposals to consider work on Corporate Sustainability Due Diligence in Global Value Chains, namely from the International Development Law Organization (IDLO) and the European Bank for Reconstruction and Development (EBRD) (under Annexes 4 and 5). Given their similarities, with the agreement of IDLO and EBRD, the Secretariat had merged the two proposals into the one set out in Document C.D. (101) 4 rev. under Section B.4. He noted that the proposed project focussed on the supply chain, as opposed to analysis of specific transactions individually considered. Because supply chains involve actors from different countries which have disparate circumstances, at times some participants in the chain may extract undue benefit from lower standards, and even externalise negative consequences for the environment and human health at the expense of weaker members of the chain. Beyond international regulation, there were ways to ensure that these imbalances and externalisations could be avoided through the use of contracts, which constituted a private law solution to a public law problem. The Secretary-General emphasised that this project sought to explore possibilities to address these issues in line with sustainable development.

116. *Ms Philine Wehling (UNIDROIT Secretariat)* presented the proposal, noting firstly that the growth of global value chains had brought enormous benefits to developing economies and economies in transition. Multinational enterprises had contributed to the economic and social development of countries in which they operated through job creation, for instance, or through the provision of goods and services. On the other hand, their business activities had also, at times, led to adverse impacts on human rights, such as child labour, and the environment, exposing people to hazardous pesticides in agricultural production. Several legal instruments had been developed at international level to counteract, most notably the 2011 UN Guiding Principles on Business and Human Rights; the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises; and the International Labour Organisation (ILO) Declaration of Principles concerning Multinational Enterprises and Social Policy. These instruments focused on providing guidance and recommendations primarily to enterprises—but also governments—on how to ensure respect for human rights standards in the business context. Importantly, all of these were non-binding soft law instruments, and over the years it had become clear that they were not being widely implemented by multinational companies on a voluntary basis.

117. Hence the shift in focus towards legally binding rules: most recently, in February 2022, at supranational level by the European Union (EU), with the adoption by the European Commission of a proposal for a Directive on Corporate Sustainability Due Diligence. Recent domestic legislative developments had also reflected the shift, and several countries had enacted supply chain due diligence laws such as the United Kingdom, France, and Germany. While most legislative activity was taking place in Europe, countries in other regions had also begun to consider future legislation on the topic. The Secretariat had analysed 14 domestic laws on supply chain due diligence, whose general aim was to obligate companies headquartered and/or operating on the domestic market to ensure that minimum human rights and environmental standards were observed throughout their supply chains. However, the laws differed considerably in scope and approach.

118. Turning to the relevance of the proposed project, she highlighted that the deviations across jurisdictions impeded corporate compliance and increased operational costs. Legal harmonisation and a clear catalogue of obligations would help foster compliance and create a level playing field for companies. While a few governments and bar associations had started to provide guidance and model clauses for contracts with suppliers, they did not address the increasingly broad range of due diligence responsibilities and were typically based on the national law of one jurisdiction. In light of this situation, UNIDROIT's contribution to harmonising supply chain due diligence might prove very timely and impactful. Upon receipt of the proposals, the Secretariat had consulted with colleagues in charge of the topic at both the ILO and the United Nations Food and Agriculture Organization (FAO), who had indeed confirmed the usefulness and timeliness of UNIDROIT developing harmonised legal or

legislative guidance. She noted that the proposed project would not be limited to the agricultural sector, yet the topic was highly relevant for agricultural supply chains in particular.

119. As for the potential types of instruments that could be developed if the project were included in the Work Programme, Ms Wehling outlined three possibilities: (i) to develop commentary on how the UPICC and their Model Clauses relate to supply chain due diligence; (ii) to prepare a compliance guide with model clauses which could address differences across national laws and present a harmonised solution for companies with global reach; or (iii) to provide legislative guidance—possibly in the form of a model law— prepared with the involvement of countries that were typically affected by the violation of human rights and environmental damage, as well as those in which the relevant companies had their headquarters or principal market. Concluding, she emphasised that ultimately an expert group established for the proposed project would need to carefully consider what type of instrument would be most appropriate.

120. *Mr Gabriel* intervened noting the importance of the issue and interest in the core concept of the proposal. He observed that there were several existing legal standards that would need to be integrated. Suggesting that a model law would not be an appropriate instrument to address this issue, in the absence of any relevant set of core legal principles, he proposed commentary or best practices as alternatives. The UNIDROIT Principles did not touch on the issue of due diligence, though the possibility had been discussed in the past, nevertheless there had been a series of projects focused on agriculture and food security which had addressed the issue, albeit obliquely. In this context, he suggested that the proposed project on corporate sustainability would be considered as the core project, which would complement and expand on UNIDROIT's existing work.

121. Upon a query posed by the Secretary-General on whether he would envision a set of model clauses as well, apart from a compliance or best practices guide, Mr Gabriel replied that it was a possibility that should certainly be considered. The breadth of the issues however might sometimes be difficult to encapsulate in model clauses, and the future Working Group would have to determine whether the model clauses format would suffice, as opposed to a commentary or set of best practices.

122. *Ms Bariatti* expressed strong support for the Secretariat's proposal, recalling that there had been several recent cross-border cases brought against companies in various jurisdictions, precisely on the basis of violation of due diligence duties. The uncertainty as to the substantive rules of due diligence and an uneven playing field derived from two facts: first, that the value chain extended cross-border for numerous undertakings; and, second, that the rules differed across jurisdictions. It was not only a matter of conflict of law rules, rather harmonised rules were necessary to reduce costs for undertakings with these types of duties. The topic was not limited to human rights and the environment, but importantly also governance, and that the future project's scope should thus also cover the governance aspect of Environmental Social Governance (ESG).

123. She noted that governance was the aspect that would bring the project into the realm of compliance, and it was necessary to set the rules in order to develop a compliance guide. Therefore, she was most in favour of a guide that would tackle the substantive issues: the extent of liability, objective liability, and the standards that would allow companies to carry out their duty of diligence and ensure that they were not subject to liability disputes for non-compliance. Finally, she noted that these issues were in the background of several of the proposed projects and recommended that this project be made the main project, rather than the one proposed by the European Law Institute (ELI), into which the latter could be integrated. She emphasised the fundamental issue of balancing the interests of the companies in carrying out their business and those of consumers, individuals, and employees whose rights ought to be protected to the maximum possible extent.

124. *Mr Meier* affirmed the importance of the project and recommended that it should have at least medium priority if not higher in the long term, for all the reasons cited previously by the other Council Members. He noted that the proposed approach was appealing in light of states' difficulties

in applying existing UN principles on corporate social responsibility, because it focussed on encouraging companies to apply these principles in supply chain contracts, rather than on repressive mechanisms. In that respect, the project could complement legal instruments and domestic legislation. He was not in favour of a model law but supported model clauses that could be used by companies. Lastly, he noted the need to coordinate this work with the other proposed projects that related to social responsibility.

125. *Ms Carmen Tamara Ungureanu* supported the project, but suggested that it might be prudent to observe the results of the European proposal imposing obligations on large companies on EU and non-EU companies beforehand. She suggested that the proposed project could be covered within the project on investment contracts and added that UNCITRAL had also touched upon this issue.

126. *Mr Bollweg* agreed on the timeliness of the project and also acknowledged the adoption of corresponding laws by some countries. Being directly responsible within his Ministry for the liability aspects of these laws, he emphasised the highly political nature of the topic, on which it was extremely difficult to find consensus. As an example, he cited the German supply chain due diligence law which had been discussed for four years only to pass in a highly muted form with few obligations for companies and lacking sufficient sanctions. He referenced the current difficulty in finding common ground within the European Council on the issue, including whether or not join a discussion on a far-reaching hard law instrument on that matter submitted by South Africa and Ecuador, which would impose sanctions including heavy fines and imprisonment of executives. In view of the extremely political nature of the topic, he expressed doubt as to whether UNIDROIT should include the matter in its Work Programme.

127. *Mr Leinonen*, while acknowledging the highly political nature of the topic, agreed that it was an important topic that UNIDROIT should work on. Referencing the Commission's recently presented proposal, he did not believe such activities should preclude UNIDROIT from working on the topic, although they might eventually complicate matters for EU member states. He added that concentrating on due diligence rather than company liability, which was to be avoided in his opinion, would make the project considerably less difficult.

128. *The representative of UNCITRAL* reported that one of the elements that UNCITRAL had been evaluating prior to the Commission session had been the incorporation of climate considerations into business decisions and relevant legal enforcement mechanisms. He noted that this proposal, conversely, was not limited to climate aspects but adopted a more holistic approach, touching upon issues such as corporate social responsibility and UN Global Compact. Nevertheless, he pointed out that the UNCITRAL Secretariat might be asked to work on one particular area thereunder, and would then have to consider how to align it with a potential UNIDROIT project. He also emphasised the connection of the proposed topic with various other areas of the law such as human rights, child labour, and the environment, which UNCITRAL, as a UN body, would naturally continue to monitor, in addition to mainstreaming those considerations into commercial law.

129. He noted that in the view of the UNCITRAL Secretariat, UNIDROIT could contribute to this domain by drawing on its commercial and contract law expertise. He expressed uncertainty about legislative issues, such as liability, which would need to be addressed in legislation or in guidance for interpretation of principles of law. The project could rather address, for instance, the allocation of liability within the value chain once a member of the chain was held liable under one law or the other. It would be very useful to develop model clauses or guidance on the application of the UNIDROIT Principles, for instance, regarding the distribution of damages for this type of breach. Finally, he stated that it was very likely that, at a certain point in time, there would be a legislative element to this proposed project, and that UNCITRAL's member states, which included many of the countries that were potential victims of violations, would likely be interested in joining and cooperating on these issues.

130. *The Secretary-General* thanked the Council Members for their support and interventions. He noted that there was consensus on the importance of the project and on including it in the Work Programme. With regard to the EU initiative, he recalled that this was merely another element to consider for the development of an international instrument by a global organisation such as UNIDROIT. Regarding the political side to the topic, he agreed that it was indeed prudent to focus on less politicised areas, such as due diligence rather than liability, although some liability issues along the supply chain would need to be considered. However, he highlighted the advantage of UNIDROIT being an intergovernmental organisation drafting a soft law instrument on the topic, which would allow for such a discussion to take place without excessive political interference.

131. *With regard to the proposal by IDLO and EBRD in the area of Corporate Sustainability Due Diligence in Global Value Chains, the Governing Council expressed its appreciation for the topic and for the project in general, highlighting its practical importance, topicality, and direct relationship with the Sustainable Development Goals. The Governing Council invited the Secretariat to conduct exploratory work on the topic and agreed to recommend the inclusion of the proposed project in the 2023-2025 Work Programme with medium priority.*

(e) Development of an Agricultural Financing Legal Guide

132. *The Secretary-General* presented the proposal of the Government of the United States to include a project on the drafting of an Agricultural Financing Legal Guide (Annexe 6, Document C.D. (101) 4 rev). He explained that the purpose of the project would be to develop a practical instrument that would take stock of the standards and best practice documents already developed for specific types of financing instruments. The project would seek to ensure consistency in the guidance that already existed from the perspective of the supply chain rather than from the perspective of a specific transaction. The prospective Legal Guide would, therefore, aim to explain how the existing standards in agricultural financing might be combined and applied to different parts of the supply chain.

133. He emphasised the usefulness of the proposal for developing countries in particular, and noted that the project could be done in cooperation with other international organisations and standard-setters, including for example the World Bank Group, UNCITRAL, FAO and IFAD. He noted the complementarity between the proposal and the ongoing work on Legal Structure of Agricultural Enterprise, Factoring and Warehouse Receipts. He clarified that work in this area would only start once the current work had been finalised.

134. *Mr Gabriel* agreed that there was no urgency in developing the project and that the proposal could be allocated medium priority. He informed that the original focus of the proposal was on agricultural security finance, however it had been broadened to cover other financing options as well. He recalled that the proposal would also be a complement to the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming.

135. *Ms Sabo* emphasised the need to avoid duplication with other existing instruments and to focus on developing a complementary Legal Guide. She agreed with the proposed level of medium priority and with beginning work in this field when the resources became available.

136. *The Deputy Secretary-General* noted that the added value of this project would be its explanatory nature to facilitate the understanding of the financing options for the agricultural field.

137. The Governing Council recognised the value of a comprehensive Legal Guide on Agricultural Financing for stakeholders in the agricultural sector and noted that this project could encourage the use of other UNIDROIT instruments, such as the Model Laws on Factoring and on Warehouse Receipts, as well as other instruments of the Institute concerning private law and agriculture.

138. The Governing Council decided to recommend the inclusion of the project on agricultural financing in the 2023-2025 Work Programme with medium priority.

139. *There was agreement that work should commence after the finalisation of the ongoing project on Legal Structure of Agricultural Enterprises, and could take place in collaboration with UNCITRAL, the World Bank Group, FAO, and IFAD.*

(f) Global Value Chains: Governance issues and Digital challenges

140. *The Secretariat presented the proposal it had received from the ELI to conduct a joint project on “Global Value Chains: Governance Issues and Digital Challenges” (C.D. (101) 4 rev, section B.6, and Annexe 7). It recalled that UNIDROIT had successfully cooperated with ELI in the past, jointly approving the ELI-UNIDROIT Model European Rules on Civil Procedure, and that a MoU had been agreed upon between the two Institutions to provide a formal general framework for cooperation.*

141. The broad scope of the proposal addressed the challenges posed by the development of new structures of governance of the supply chain, starting with the role of contracts not only as essential building blocks but also as governance tools. It also looked at a variety of contract-based governance models that created more complex relationships among participants, such as networks, multi-party contracts, and collaborative or associative schemes. Moreover, digital technology had provided new organisational and governance architectures that affected GVCs, such as centralised and decentralised models (platforms, Distributed Ledger Technologies (DLT)). Additionally, the digitalisation of trade flows and the surge of the data economy had profoundly affected global value chain governance. UNIDROIT had already developed or was developing a number of instruments on contract law that impacted on various aspects of GVCs, particularly the UPICC and, with a sectoral scope, the Legal Guide on Contract Farming and the prospective guidance document on Legal Structure of Agricultural Enterprises, as well as the projects on Digital Assets and Private Law and the Model Law on Warehouse Receipts. The question was whether existing contract principles and uniform law instruments provided sufficient regulation for such new models, in relation to a variety of issues such as, for example, the allocation of liability along the chain, the enforcement of contractual rights affecting third parties and, more generally, the effectiveness of contractual remedies, the need to consider how to integrate non-commercial issues such as Corporate Social Responsibility, and the impact of the new structures created by technology, particularly in relation to governance mechanisms.

142. The Secretariat concluded that the broad scope of the project proposal and the interplay with other ongoing projects and UNIDROIT instruments suggested that it would be appropriate to conduct exploratory work in order to more precisely define the scope and the expected outcomes of the new project. In particular, whether the proposed instrument should be a guidance document to apply the UPICC to GVCs, the development of a set of new principles for GVCs and/or the elaboration of model clauses for the contracts underpinning the governance structure of data-based/-driven GVC would need to be considered.

143. *The representative of the ELI intervened to support the proposal and to commend the fact that the governance of the supply chain, including consideration of non-commercial issues, had been considered and would be synergetic with other project proposals. She also emphasised the importance of the ELI’s existing work on business and human rights, data economy, blockchain and digital assets as a basis for the development of sound international guidance on these themes.*

144. *Mr Gabriel queried why such a topic would be addressed in partnership with the ELI which had a regional scope of activity. He also questioned whether the proposal was sufficiently clear in relation to concrete problems to be addressed, for which uniform law solutions would be required.*

145. *Ms Broka* echoed this concern and referred to the fact that the proposal appeared to be very broad in its scope, particularly in relation to the impact of new technologies, as different structures would produce different questions and challenges.

146. *Mr Lorenzetti* noted that some of the issues raised in the proposal were common to those addressed in the ongoing projects such as the Legal Structures of Agricultural Enterprises or Digital Assets and Private Law, and that a list of the common issues and those not addressed by existing projects would be useful.

147. *Mr Moreno Rodriguez* supported the Secretariat's suggestion to include the project in the Work Programme because it had the potential to address relevant issues, and asked for confirmation that no action would be taken in the short term, except conducting exploratory work to better define its scope.

148. *The Secretary-General* clarified that the ELI's mandate did not limit its activity and instruments to a regional sphere, as confirmed by the representative of ELI, who mentioned newly approved projects such as the ALI-ELI Principles. The Secretary-General further recognised that many of the new proposals had the common element of looking at the entire value chain, which added complexity to the analysis but was practically more useful. Those proposals were complementary to the current Legal Structure of Agricultural Enterprises project, yet this would not be a reason to reject them, as the outcome of the discussions would feed into that project. The Deputy Secretary-General confirmed that the Secretariat was asking for a mandate to conduct exploratory work with the proponents, which could include other organisations, in order to better define the scope and content of the project. She also noted that the proposal was broad but not theoretical, as it already listed concrete problems that affected GVCs and that would need guidance at international level.

149. *Ms Sabo*, referring to an earlier comment that queried whether the two proposals received on GVCs should be merged, expressed some reluctance to do so, as the two projects could both be useful on their own merits.

150. *The representative of the HCCH* noted that the project recognised the importance of addressing, among other issues, those pertaining to applicable law and jurisdiction, and pointed to the specific work undertaken by the HCCH on such topics in relation to the new technologies that were mentioned in the proposal, which the HCCH was addressing in a technology neutral manner and with specific attention to cross-border issues.

151. *The representative of UNCITRAL* noted that UNCITRAL and UNIDROIT had undertaken a broad cooperation on digital economy, which had included stock-taking on an ample set of issues and elaborating a taxonomy, that could constitute a framework to conduct further work on Artificial Intelligence (AI) related topics impacting the GVs.

152. *The President of UNIDROIT* summarised the discussion noting that, while recognising the relevance of the topic, the Governing Council had expressed the need for a more precise definition of the scope and aim of the project.

153. *The Governing Council recommended the inclusion of a project on "Global Value Chains: Governance issues and Digital challenges" in the 2023-2025 Work Programme with low priority, but with the possibility of conducting exploratory work, jointly with the European Law Institute, to further define the project. If agreed, a more defined proposal would be presented for reconsideration in the 102nd session of the Governing Council.*

(g) Standard-Essential Patents (SEPs)

154. *The Secretary-General* noted that WIPO had also expressed interest in undertaking exploratory work together with UNIDROIT on Standard-Essential Patents (SEPs). He noted this proposal had been positively received by Governing Council Member Ms Bénédicte Fauvarque-Cosson. He suggested following the same course of action with regard to the proposal on personalised medicine (see above paras. 74-95).

155. *Without assigning any particular level of priority to the project, the Governing Council invited the Secretariat to explore, together with WIPO and with limited resources, potential work in the SEPs area in the period leading to the next session of the Council.*

(h) Digital Transformation, Data Governance and Artificial Intelligence

156. With regard to the project on Digital Transformation, Data Governance and Artificial Intelligence proposed by the European University of Rome, *the President* noted that this work would focus on AI in the areas of Corporate Law and Information Technology. It was also noted that adequate attention would be paid towards ensuring that there was no overlap with the work which UNCITRAL was already doing in this area.

157. *The representative of UNCITRAL* noted the need to consider the overlap this new project may have with UNCITRAL's ongoing work on Artificial Intelligence and Automation in Contracting.

158. *No recommendation for inclusion in the Work Programme or assignment of any particular level of priority to the project was made by the Governing Council, which agreed to exploratory work taking place in the period leading to the next session of the Council.*

(i) Access to Justice in Environmental Matters

159. With regard to the proposal submitted by the University of Macerata (Italy) on Access to Justice in Environmental Matters, *the President* noted its connection some of the other new projects proposed and informed that a workshop with the university could be organised to further specify the scope of the proposed project.

160. *No recommendation for inclusion in the Work Programme or assignment of any particular level of priority to the project was made by the Governing Council, which agreed to exploratory work taking place in the period leading to the next session of the Council.*

(j) Preparation of other Protocols to the Cape Town Convention: Renewable Energy equipment

161. *Mr William Brydie-Watson (UNIDROIT Secretariat)* introduced the topic, with reference to paragraphs 151-157 of document C.D. (101) 4 rev. He noted that despite increasing international cooperation to combat climate change, investments in clean energy would need to triple in the next decade in order for 'net zero' emissions to be achieved. He explained that should the Governing Council decide to retain the Renewable Energy Protocol project on the Institute's Work Programme, the Secretariat would partner with law firms that had offered pro bono assistance on the project to develop a private sector questionnaire to determine whether the Cape Town Convention system would address the current challenges in accessing credit for renewable energy projects. The Secretary-General noted that renewable energy equipment was generally financed through project finance arrangements rather than by asset-based finance. He concluded that the core issue that needed to be resolved was whether strengthening asset-based secure financing through a Renewable Energy Protocol would increase access to credit and lower the cost of credit in the renewable energy sector.

162. *Mr Bollweg* expressed his support for retaining the Renewable Energy Protocol project on the Institute's Work Programme for the 2023-2025 triennium. He explained that financing for renewable energy equipment was urgently needed to support energy transition in Germany and around the world. He suggested that consultations with the private sector and relevant organisations should begin quickly, as private sector support would be crucial to the success of the instrument. He further noted that the project was supported by the German banking association, which was interested in exploring alternative means of financing for renewable energy projects. On the basis of the pressing need for urgent international climate change action, Mr Bollweg concluded that the Governing Council should consider upgrading the Renewable Energy Protocol project to a medium priority for the future Work Programme.

163. *Ms Sabo* agreed that the Renewable Energy Protocol project should be retained on the Institute's future Work Programme. She suggested that the core question regarding the suitability of the Cape Town Convention system for the renewable energy sector to be addressed through private sector consultations could be achieved without upgrading the project to a medium priority. *Mr Gabriel* concurred that the project should be retained as a low priority project as the Secretariat did not have the resources to progress the project with a higher priority.

164. *The Secretary-General* agreed that the Secretariat could conduct relevant consultations and distribute a questionnaire under the low priority currently assigned to the project.

165. The Governing Council decided to retain the Renewable Energy Protocol project on the Institute's 2023-2025 triennial Work Programme as a low priority project.

Overall conclusion of the Governing Council on the New Work Programme 2023-2025

166. *The Governing Council took note of the proposals received for inclusion in the Work Programme for the 2023-2025 Triennium, and agreed with the Secretary-General's assessment that six constituted the maximum number of projects the Institute could manage simultaneously with its current resources. Any new initiative would either start once one of the existing projects concluded or when new resources became available.*

167. *The Council expressed its general appreciation for the quality and quantity of the proposals received by the Secretariat for potential work during the 2023-2025 Triennium. In particular, the Members of the Council greatly appreciated the Secretariat's efforts to connect with international organisations which had no previous history of working with UNIDROIT, as this generated greater interest in the work of the Institute. The Governing Council also approved the Secretariat's request for more flexibility with regard to introducing new proposals during the upcoming Triennium.*

168. For the complete list of ongoing legislative activities carried over from the 2020-2022 Work Programme and the level of priority recommended by the Governing Council for the new project proposals for the 2023–2025 Work Programme, see Annexe I of the Summary Conclusions document [C.D. \(101\) Misc.2 rev.](#)

Item 5: Ongoing legislative activities

(a) Model Law on Factoring [\(C.D. \(101\) 5\)](#)

169. *Senior Legal Officer Mr Brydie-Watson* introduced the topic, referring to document C.D. (101) 5. He highlighted three specific issues for the Governing Council's attention. First, he noted that the draft Model Law on Factoring (MLF) submitted to the Governing Council was consistent with the UNICITRAL Model Law on Secured Transactions on fundamental legal issues, such as (i) its application to both the outright assignment of receivables and security interests in receivables, and (ii) registration providing the basis of perfection and third-party effectiveness of interests. By

adopting a clear, limited scope for the MLF, the Working Group had managed to prepare an instrument that was shorter than the Model Law on Secured Transactions. Second, Mr Brydie-Watson set out the proposed public consultation process for the draft MLF, which involved consulting UNIDROIT stakeholders, project stakeholders and private sector stakeholders. Finally, he explained the MLF's finalisation process and possible future work on the project. He noted that the MLF Working Group had suggested that it would be necessary to develop a Guide to Enactment for the instrument to ensure that States had sufficient information to effectively implement the instrument. He noted that the Guide to Enactment would include both an article-by-article commentary and broader guidance for implementing States on various issues that had been identified by the Working Group.

170. In his capacity as Chair of the MLF Working Group, *Mr Gabriel* noted that the Working Group was composed of knowledgeable and hardworking experts who had done an outstanding job in quickly and efficiently preparing the draft MLF. He noted that the draft instrument was fairly complete in that it accurately reflected the policy decisions made by the Working Group with concise, clearly drafted language. Mr Gabriel further noted that the draft MLF applied to both the sale of receivables and security interests in receivables, which went slightly beyond the traditional notion of 'factoring' which typically only covered the outright sale or assignment of receivables. He explained that the factoring industry had been active participants in the project and would be a key partner in seeking feedback on the draft instrument and promoting it once it is adopted. He noted that he had been invited to speak at the Factors Chain International annual meeting in Washington DC in late June 2022, and that this peak industry body was highly supportive of the project. He further explained that private sector bodies had previously attempted to prepare factoring model laws but none had been successful, which was why the industry wanted UNIDROIT to develop a best practice instrument that could be used as the basis of legislative reform around the world.

171. *Ms Sabo* thanked Mr Gabriel and the Secretariat for the update. She noted that the project was progressing well and agreed that the draft MLF was sufficiently developed to begin public consultations.

172. *Mr Moreno Rodriguez* queried why the earlier factoring model laws prepared by private sector entities had failed. *Mr Gabriel* explained that the earlier instruments had not undergone a careful negotiation and legislative drafting process at an intergovernmental organisation and were not seen as sufficiently clear nor deemed international best practice.

173. *Sir Roy Goode* noted that the explanatory document provided to the Governing Council did not reference the UNIDROIT Convention on International Factoring. *Mr Gabriel* explained that the UNIDROIT Factoring Convention had been discussed in the Working Group documentation and would certainly be addressed in the future Guide to Enactment.

174. *The Governing Council took note of the full draft Model Law on Factoring and commended the Chair of the Working Group and the Secretariat for the excellent work done. The Governing Council asked the Secretariat to undertake public consultations on the draft instrument, with a view to its adoption at the Council's 102nd session in 2023.*

175. *The Governing Council decided to recommend retaining the Model Law on Factoring as a high priority project in the Institute's 2023-2025 Work Programme, in order to allow for (i) the finalisation and adoption of the Model Law itself, and (ii) the preparation of a Guide to Enactment for the Model Law.*

(b) Best Practices for Effective Enforcement [\(C.D. \(101\) 6\)](#)

176. *The Deputy Secretary-General Ms Anna Veneziano* briefly presented document C.D. (101) 6 on the project on Best Practices for Effective Enforcement (BPEE), referring to the document itself and previous presentations to the Governing Council.

177. Since the beginning of its activity in December 2020, the Working Group had met for four sessions, facilitated by an intense intersessional activity supported by the Secretariat. After the latest Governing Council session, the Working Group had been enriched by two participants (one member and one observer) from the People's Republic of China and several independent experts joining as observers from various jurisdictions.

178. Ms Veneziano reported on the the third session of the Working Group, which had been held in hybrid format between 29 November and 1 December 2021. She noted that, as agreed in the intersessional period, a special focus on enforcement over receivables had been the subject matter of the first day of deliberations of the Working Group, in view of the commercial relevance of this type of asset and the connection with the use of automated procedures. The discussion had been conducted on the basis of detailed documents prepared by Working Group members that addressed third party debt orders or garnishment proceedings in enforcement by way of authority; necessary steps in the enforcement of monetary claims by way of authority by third party debt orders in order to integrate automation; suggested best practices for automation in the enforcement of monetary claims by way of authority by third party debt orders; and revised best practices on enforcement of security rights over receivables and automation. Two additional sets of issues from the Report of Subgroup 1 for the second session had also been addressed, in particular those contained in the parts on charging orders on land and on complex enforcement on special assets. Moreover, the Working Group had discussed the document prepared by Subgroup 2 for the third session, namely revised best practices on disposition of collateral and on the extent of party autonomy in enforcement. Finally, Ms Veneziano noted that more details on the content of the session were provided in Document 6.

179. The Deputy Secretary-General then referred to the two Workshops that had been organised by the Secretariat during the intersessional period to discuss issues related to the interaction between technology and enforcement: on 8 March 2022, a virtual Workshop on "Technology in Enforcement: recent developments and opportunities", with participation of experts from different jurisdictions (UAE, Latvia, Moldova, Colombia) and the UIHJ, the video of which was available on the UNIDROIT YouTube Channel; and on 19 January 2022, an internal Workshop on Enforcement on Digital Assets, in which participants discussed two papers provided by Carla Reyes and Teresa Rodríguez de las Heras. In relation to this latter Workshop, Ms Veneziano noted that the Secretariat had drafted a Research Memo on Digital Assets and Enforcement, as a joint activity supporting both the Digital Assets and Private Law and the BPEE Working Groups. The Memo contained selected cases on enforcement-related issues regarding digital assets which had been rendered in various countries with particular regard to civil law jurisdictions, and had formed the basis for the document on Enforcement on Digital Assets discussed at the fourth session of the Working Group.

180. The Deputy Secretary-General went on to report on the fourth session of the Working Group of 19-21 April 2022, acknowledging the relevant contribution of Working Group members and observers and in particular of Professor Teresa Rodríguez de las Heras, as resident Sir Roy Goode Scholar and UNIDROIT Consultant, in the preparation of the documents for the session. The session had addressed draft best practices for enforcement by way of authority, and had discussed a Secretariat's document on enforcement on digital assets and a Secretariat's document on e-auctions. Ms Veneziano referred to Document 6 for further details on the content of the session, as well as for the additional activities undertaken by the Secretariat in relation to the project.

181. In relation to future steps, Ms Veneziano reiterated the Secretariat's intention to continue to provide support to the Chair and Working Group members and observers for the organisation of intersessional meetings to advance the preparation of the instrument. She stated that the fifth

session of the Working Group had been scheduled for 12-14 December 2022 and was expected to discuss an advanced set of best practices accompanied by explanatory comments. She further noted that, though Working Group members been working intensively on the project, in view of the ample scope and complexity of the issues to be addressed the Secretariat had invited the Governing Council to recommend the retaining the project on the 2023-2025 Work Programme to the General Assembly, to ensure its completion during the first part of the next triennium.

182. Finally, the Deputy Secretary-General recalled that at the invitation of the two Chairs of the Working Groups, a special Workshop on Digital Assets and Enforcement had been organised on the last day of the Governing Council session, to discuss such issues and the coordination between the two projects.

183. *The President of UNIDROIT* queried whether Ms Sabo, the Chair of the Working Group, wished to make any additional remarks.

184. *Ms Sabo* stated that the Secretariat had provided an exhaustive report and commended its dedication to further the project. She noted that the report itself did not do full justice to the incredible amount of work and meeting hours that had been invested by the Working Group and the Secretariat during the sessions and particularly in the intersessional periods, which she had personally witnessed. She underlined that the project had a very broad scope, including judicial and extrajudicial enforcement, enforcement of secured and unsecured claims, enforcement on different types of assets, and a special focus on the impact of technology. Despite the meticulous work that had already been done, more time was needed to reach a common understanding of all issues. She added that, in relation to secured transactions, the Working Group was being very careful to ensure consistency with existing UNCITRAL instruments that covered certain aspects of enforcement, and mindful of UNCITRAL's work on tracing and recovery in insolvency which had just started, though the two project were different in terms of development, scope and purpose.

185. *The President* thanked the Deputy Secretary-General for the presentation and asked the Governing Council to take note of the progress made by the Working Group and to recommend retaining the project in the Work Programme as high priority until its completion, which was expected by 2024.

186. *The Governing Council took note of the progress made by the Working Group on Best Practices for Effective Enforcement since the Governing Council's 100th session held in September 2021.*

187. *The Governing Council recommended retaining the project in the 2023-2025 Work Programme as a high priority activity until its completion, expected in 2024.*

(c) Digital Assets and Private Law (C.D. (101) 7)

188. *Mr Carlo Di Nicola (UNIDROIT Secretariat)* introduced the topic, with reference to document C.D. (101) 7. He explained that substantial progress had been made towards the preparation of a set of Principles, Commentary and Legislative Guidance on Digital Assets and Private Law (DAPL) since the 100th session of the Governing Council, thanks to the Working Group's diligent and swift work.

189. The Working Group, chaired by Professor Hideki Kanda, had held its fourth (2-4 November 2021) and fifth session (7-9 March 2022). At the fifth session, there had been broad consensus regarding the inclusion of the newly drafted Introduction, several principles had been split into new principles, and a number of broader principles had been shifted to the provision concerning General Principles. Two entirely new principles had also been developed: Principle 4 on "linked assets" (subsequently moved to Principle 3) and Principle 5 (since moved to 4) on conflict of laws. A number

of existing principles had been redrafted in order to reflect the decisions made at the fourth session of the Working Group and to achieve a more consistent style.

190. Further, a presentation had been given on what was then Principle 5 touching upon conflict of laws (Private International Law (PIL)), emphasising that the overriding policy goals of this Principle should be to: (i) provide legal certainty to parties involved in cross-jurisdictional transactions; and (ii) keeping one law applicable to all aspects of the property of digital assets of the same issue. The Conflict of Laws principle had been redrafted based on a substantial number of comments and suggestions for improvement. The Working Group had also discussed the progress of Principles 6-15, with particular focus on drafting, cross-referencing and issues relating to key terms and concepts. An update had been provided concerning enforcement, noting that the DAPL Project had coordinated its efforts in this regard with the BPEE Working Group. The Working Group had also discussed the approach to be adopted in the examples provided in the Commentary to the Principles, and agreed on the necessity to improve the overall consistency of the Commentary.

191. Intersessional work had been carried out in the form of a series of *ad hoc* special workshops, as well as a series of subgroup meetings that had been held up until the fourth session of the Working Group. In view of the development of the project and the state of advancement of the draft instrument, and to facilitate the co-ordination of the drafting and refinement of the various principles, the Working Group had decided at its fourth session to establish a Drafting Committee to carry out the intersessional work, which, chaired by Professor Louise Gullifer, had met a total of seven times from December 2021 to April 2022.

192. The first distribution of documents to the Steering Committee on DAPL had taken place earlier in 2022, and the Secretariat had received responses from 24 experts from 14 countries and one Regional Economic Integration Organisation, with overall positive feedback. Mr Di Nicola explained that the sixth Working Group session would take place between 31 August and 2 September 2022, with intersessional work to continue in the form of additional meetings of the Drafting Committee, possibly of the subgroups, as well as other special workshops, according to the needs of the Working Group. Broad consultations would subsequently be undertaken before the finalisation of the instrument and its proposal for adoption by the Governing Council in 2023. Mr Di Nicola further noted that the aforementioned Special Joint Workshop that would be held on 10 June 2022, between the DAPL project and the BPEE project, would aim to identify the key issues arising out of enforcement of digital assets that could be mitigated by means of private law. Finally, Mr Di Nicola expressed his gratitude to the Working Group experts and observers, with special thanks to the Members of the Drafting Committee.

193. In his capacity of Chair of the DAPL Working Group, *Mr Kanda* thanked the Secretariat, the Working Group members, and observers for all their work on the project. He provided an overview of the structure of the draft instrument, noting that the latest version contained a draft introduction and a total of 19 draft Principles accompanied by commentary and legislative guidance. Regarding the section on enforcement (Section VII), Mr Kanda noted that it was still work in progress and that the DAPL Working Group would further coordinate with the BPEE Working Group. He also noted that the section on insolvency (Section VIII) was also work in progress.

194. Mr Kanda provided further remarks on several core issues being considered by the DAPL Working Group, illustrating a number of specific dispositions of the draft instrument: Principle 1 addressed the scope of the instrument, providing that “These Principles deal with the private law relating to [transactions in] digital assets”; Principle 2 provided a number of key definitions, including “Electronic record” and “Digital asset”; Principle 3 concerned a number of general principles such as the statement to the effect that “Digital assets can be the subject of proprietary rights”; Principle 4 concerned private international law and was drafted with the aim to provide an incentive to parties to strengthen legal certainty. Section III concerned the core concept of control, Section IV transfer, Section V custody, and Section VI secured transactions.

195. In her capacity as Chair of the Steering Committee on DAPL, *Ms Monika Pauknerová* expressed her gratitude to the Chair of the Working Group, as well as to the Secretariat for their efforts. She also thanked the members of the Drafting Committee and the Experts of the Working Group for already accounting for the Steering Committee's feedback and incorporating it into the latest version of the Master Copy. She further expressed her gratitude to the members of the Steering Committee for providing the invaluable feedback on the draft Master Copy of the DAPL Principles and Legislative Guidance, which she went on to illustrate in more detail.

196. A number of members had provided comments on their domestic laws where there was already existing legislation on digital assets, whereas others had expressed support for the overall approach taken thus far by the Working Group. Areas that were mentioned that the Working Group might wish to pay special attention to were the following: firstly, the Project would need to continue aiming for a balance between common law and civil law approaches when touching upon notions such as "ownership, control, and possession" and the concept of "property"; second, the Project would need to consider simplifying the language and concepts used throughout the Principles. Regarding specific provisions of the draft Master Copy, she noted that some comments had recalled the importance of ensuring technology neutrality in the development of the Principles, while others had focused on the importance of a tighter definition of the scope of the Principles (i.e. using the definition of "electronic records") and providing clear examples to illustrate the definition of "digital assets". She noted that other comments had focused on the importance of clearly distinguishing between private law principles and financial regulation regarding issues such as custody. She further highlighted a number of comments regarding both Principle 4 concerning PIL and Principle 5 concerning the definition of control, in particular, regarding the importance of addressing the nuances in how civil law and common law jurisdictions treat the concept of possession (i.e. the Principles deem possession to be a purely factual matter and not a legal concept).

197. *The representative of the HCCH* congratulated UNIDROIT, the Chair and members of the DAPL Working Group for all the important work that had been carried out so far and thanked the Chair of the Steering Committee for her presentation of the first round of feedback. She welcomed the continued cooperation between UNIDROIT and the HCCH, further noting that the HCCH had recently commenced work in the area of digital economy and PIL. She noted that the Draft Principles contained a section on PIL with references to the HCCH Principles on the Choice of Law in International Commercial Contracts, expressing concern regarding the possibility for potential overlap between the organisations in their respective workstreams in this area. Finally, she highlighted that the HCCH was organising a conference on commercial and financial law and PIL in the digital economy, planned for September 2022 and which would aim to address a number of questions (e.g., applicable law, the role of party autonomy with respect to digital assets, smart contracts, and third-party effects of digital assets). Finally, she noted the importance of close coordination between the sister organisations in their respective workstreams in this field.

198. *The representative of UNCITRAL* joined the representative of the HCCH in congratulating UNIDROIT and the Chair and members of the DAPL Working Group for all the important work carried out so far in the Project. He noted that the Project had originated from the joint initiative on the taxonomy of issues arising out of the digital economy and the agreement that UNIDROIT would carry out the work on a legislative instrument in the area of digital assets. He further noted that UNCITRAL's work on electronic commerce had started in the late 1980s and focused on removing legal obstacles to ensure the functional equivalence between the use of electronic records for trade purposes and paper-based documentation. That work had resulted in the development of various model laws, with the most recent being the 2017 Model Law on Electronic Transferable Records. The G7 Meeting in 2021 had issued a *communiqué* on digital tech trade encouraging countries to adopt a legal framework on electronic transferable records, particularly, the UNCITRAL Model Law. UNCITRAL therefore welcomed any work that would enhance the legal clarity of the UNCITRAL Model Law and ensure as much consistency with it as possible.

199. With regard to the Model Law on Electronic Transferable Records, the representative of UNCITRAL went on to note that it did not itself define control, despite it being a key element of the Model Law. Rather, it provided the notion of control as a functional equivalent of physical possession of an electronic transferable record, without defining it specifically. He noted that the current draft DAPL Principles appeared to go one step beyond the functional equivalence principle, with the attendant potential risk for confusion between possession and property. He observed that the current definition of control in the DAPL seemed to be more a substantive law provision rather than a functional equivalence between digital assets and substantive assets. He noted that the notion of control was not necessarily an attribute of possession in most legal systems, and might be more an attribute of property rights, attached to the substantive nature of the right to the asset being discussed. The reason for this difference could be found perhaps in the broader understanding of the concept of digital assets in the Principles. The latter indeed not only seemed to be concerned with a dematerialised representation of a tangible asset, which alone represented rights either to performance of obligations or property rights, but also with the assets that would exist only in a digital form. He recommended that the Working Group might undertake further work to draw a distinction between these two situations, so as to avoid inconsistency with the UNCITRAL Model Law.

200. Further, the representative of UNCITRAL noted that Working Group V on Insolvency Law had begun considering applicable law in insolvency proceedings, observing that there were provisions dealing with applicable law not only in general terms, but also specifically with insolvency situations. He welcomed any comment on this from the DAPL Working Group and noted that Working Group V may also make a contribution to the DAPL Project.

201. *Ms Broka* noted the rapid development and growing economic importance of the sector, which was raising many legal questions to be answered, referencing the recent collapse of a digital asset called Luna. In the light of this crash, she remarked that some countries such as Japan and the United States of America were seeking to formulate new legislation. She noted the parallel trends with some of the issues facing the Working Group in trying to unify different legal systems. She expressed gratitude to the Working Group for the progress made thus far and looked forward to the Special Joint Workshop between the DAPL project and the BPEE project.

202. *Mr Gabriel* concurred that Principle 5(1)(a) on control could benefit from further review. He noted that the commentary stated that control was a functional equivalent of possession and queried whether that referred to a functional equivalent of the purpose of possession.

203. *Mr Kanda* replied to Mr Gabriel's point in the affirmative. He clarified that it was not stated that the notion of control was the functional equivalent of possession, because possession was both a factual and legal concept for some jurisdictions, whereas it was a legal concept for others (e.g. referred to as constructive possession or indirect possession in Japan). He clarified that the Principles used the notion of control not in a legal sense but in a factual one. Referring to the comments that had been raised, he firstly noted the need to favour a functional rather than legal approach due to the fact that certain legal concepts might not exist in some jurisdictions. The Project was generally concerned with basic situations of custody, control, transfer, and secured transactions, and no matter how a given legal system characterised the rights, the goal should be the same: harmonisation and legal certainty in a global market. Accordingly, at this stage, the Project's notion of control was factual and not legal, which did indeed differ from past instruments such as the Geneva Securities Convention and the UNCITRAL Model Law. He noted that the commentary should be revised to further elucidate this stance. Second, he addressed the point regarding the distinction between a paper-and-digitalised asset (e.g. bills of lading, warehouse receipts, etc.) and digital assets (Bitcoin, Ethereum etc). Whereas the first area featured a number of international legal instruments, including the UNCITRAL Model Law on Electronic Transferable Records, the second area had no such history and no experience with international discussion and instruments. He remarked that the relation between general Principles and more special instruments should be such that special statutes in

specific areas were considered to apply and, to that extent, these Principles would not apply in such a case.

204. *The representative of UNCITRAL* expressed appreciation for Mr Kanda's clarification of the intent to describe the situation as merely factual control, while noting that Principle 3 was not factual as it concerned the agreement of the parties as to their rights in the asset. He queried whether this warranted further consideration in the light of the distinctions that the Working Group might wish to make.

205. *The Secretary-General* thanked all the participants for their interventions, which had been duly noted and would be addressed. He welcomed further coordination with UNCITRAL Working Group V on Insolvency. Regarding the HCCH representative's comment on coordinating both organisations' work on applicable law, he agreed and noted that that the DAPL project could not avoid this question as all the other provisions would be void of any sense without it. When the Institute had commenced its work on the DAPL Project two years prior to the current session, the HCCH had not yet received a mandate on this topic and the work had progressed accordingly. He welcomed the HCCH's work in this area as the primary organisation in PIL matters, noting his appreciation for coordination and cooperation between UNIDROIT and the HCCH.

206. *The representative of the HCCH* thanked the Secretary-General for his intervention and highlighted the importance of rational deployment of resources amongst the sister organisations. She noted that she looked forward to the continued cooperation.

207. *The Governing Council took note of the progress made by the Digital Assets and Private Law Working Group at its fourth and fifth sessions, as well as of the intersessional work carried out by the sub-groups and the Drafting Committee, culminating in a draft of the Master Copy of the Principles and Legislative Guidance.*

208. *The Governing Council also took note of the update on the progress of the Steering Committee on Digital Assets and Private Law provided by its Chair, Professor Monika Pauknerová.*

209. *The Governing Council recommended retaining the drafting of an instrument on Digital Assets and Private Law in the 2023-2025 Work Programme as a high priority activity until its final completion, expected in 2023.*

(d) Model Law on Warehouse Receipts ([C.D. \(101\) 8](#))

210. *Ms Wehling* reported on the joint UNCITRAL/UNIDROIT Model Law on Warehouse Receipts Project, summarising the progress that had been made since the Council meeting in September 2021 and presenting an invitation to the Council to extend the project for an additional year to allow for the preparation of a Guide to Enactment.

211. Addressing first the progress made in relation to the project, Ms Wehling highlighted three meetings that had taken place since September 2021, namely a Special Workshop on Electronic Warehouse Receipts, the fourth Working Group meeting, and the first in-person meeting of the Drafting Committee.

212. The Special Workshop on Electronic Warehouse Receipts had been organised by the Secretariat in January 2022 with the participation of selected experts in a remote format. The aim of the workshop was to consider and discuss options and possible limitations of addressing technology-related aspects in of the Model Law. More precisely, it aimed to identify what provisions might be included in the Model Law to establish an enabling legal framework for electronic warehouse receipts to reflect current practices, align with relevant international legal instruments, and accommodate any future developments in practice, business models, or technology. The discussion at the Workshop

had been guided by a discussion paper with drafting suggestions on electronic warehouse receipts prepared by the technology subgroup with the Secretariat's assistance, which had subsequently been revised for consideration by the Working Group based on the outcomes of the Workshop.

213. The fourth meeting of the Working Group had been held from 28 February to 2 March 2022, and had focussed on three key items. Firstly, it had considered the three draft chapters that had been revised by the Drafting Committee, namely Chapter I, "Scope and general provisions"; Chapter II, "Issuance of a warehouse receipt"; and Chapter IV, "Transfer of warehouse receipts". Secondly, the participants had discussed what provisions needed to be added or adapted in the current Model Law text in order to incorporate electronic warehouse receipts and signal their equal importance to paper-based receipts at the very least. Third, the participants had focussed on security rights in warehouse receipts. The Group had largely been able to agree on the extent to which the Model Law should address security rights in receipts rather than relying on general secured transactions law in a particular implementing jurisdiction.

214. The Working Group meeting had been followed by the first in-person meeting of the Drafting Committee from 3 to 4 March. In addition to revising the draft Model Law chapters according to the Working Group's discussion, the Drafting Committee had also revised each of the draft provisions, with the objective of ensuring that they applied equally to both paper-based and electronic warehouse receipts in accordance with the conceptual approach of medium-neutrality. The Committee added new provisions specifically on electronic warehouse receipts where both paper-based and electronic warehouse receipts could not be covered together in one provision or where additional, specific provisions on electronic warehouse receipts were necessary to establish an enabling legal framework for their issuance and transfer. Furthermore, the Committee had started preparing the three draft remaining chapters of the Model Law, on rights and obligations of the warehouse operator; conflict of laws; and implementation of the law. Intersessional work, in particular by the Drafting Committee, the technology subgroup, and selected experts in collaboration with the Secretariat had also taken place, including research, preparation of documents as well as regular virtual meetings.

215. Lastly, with regard to the work plan, Ms Wehling recalled that at its 100th session the Council had authorised an extension of the project for one calendar year to finalise the draft Model Law text. Accordingly, two additional Working Group meetings were envisaged for the completion of the draft Model Law: The fifth Working Group meeting was confirmed for 5 to 7 December 2022, which would again be followed by an in-person Drafting Committee meeting over two days. The sixth Working Group meeting was planned for early 2023.

216. Turning then to the proposed extension of the project for an additional year to allow for the preparation of a Guide to Enactment, Ms Wehling stated that all comments and concerns raised by Governing Council Members during the previous day's discussion on the new Work Programme had been well noted by the Secretariat (see above paras. 39-58). She explained that the purpose for the Guide would be twofold: to explain the Model Law provisions as well as their relationship with the more general legal framework of a given country, and to provide guidance to regulators on how to draft subsidiary legislation that would be required to implement the law. She emphasised the particular importance of providing such guidance for electronic warehouse receipts to help enacting States prepare the necessary supportive regulatory framework. In concluding, Ms Wehling noted that the Council had already consented to the proposed extension, as well as to the proposed approach that the Working Group start working on the Guide immediately following the submission of the Model Law text to UNCITRAL. The Secretariat would safeguard flexibility in this working approach to ensure that any changes to the Model Law text at UNCITRAL were accommodated in the Guide.

217. *Ms Dacoria*, in her capacity of Chair of the Working Group, took the floor and congratulated the Drafting Committee, the Working Group, and the Secretariat for the excellent work done. She stated that the meetings that had been held during this second year of the project had been very

fruitful and observed that the project was progressing as planned, with three out of six chapters nearing completion. Specifically, she highlighted the progress made on the incorporation of electronic warehouse receipts into the Model Law provisions in accordance with the principle of medium neutrality, signalling their equal importance to paper-based receipts. The Special Workshop on Electronic Warehouse Receipts held in January 2022 had been particularly useful in this regard. She was confident that, with the two additional Working Group meetings, the Group would be able to finalise the draft Model Law text by the first half of 2023. Lastly, she addressed the proposal to extend the high priority status for the project for one calendar year in order to allow the Working Group to prepare the Guide to Enactment. She highlighted that the Guide would aim to clarify all questions that legislators might face when implementing the Model Law in domestic legislation.

218. *The representative of UNCITRAL* emphasised the partnership between UNCITRAL and UNIDROIT in implementing this project, which had been initiated by UNCITRAL, and went on to support the Secretariat's request for the extension of the project to work on a future Guide to Enactment. Firstly, he noted that one of the challenging issues the Working Group was facing was to define the envisaged scope of the instrument, to ensure its focus be on warehouse receipts, as opposed to a general instrument on the contract of bailment, as well as determining the extent to which the Model Law should deal with the latter. The two aspects could not be entirely separated, and there had been elements of the underlying contract of deposit that would influence the rights of the parties under the warehouse receipt. Some of these elements might be dealt with in the Model Law, such as for example the liability of the issuer of a warehouse receipt for a windfall in the commodities deposited. Additionally, it could be helpful to allude to or even describe related regulatory aspects, for instance bonding insurance requirements imposed on the warehouse operator, in the Guide to Enactment. This would draw the attention of enacting States to the surrounding legal framework, clarifying that the Model Law itself did not address those issues comprehensively.

219. Secondly, the representative of UNICTRAL noted that the Working Group had to achieve functional equivalence concerning the issue of negotiability, among others, recalling that civil and common law systems adopted different approaches in this respect. Lastly, he stated that there were still some matters of detail to be discussed, for instance concerning the single and dual formats of warehouse receipts, which were approached differently in various countries. This complexity of the subject matter had required additional time for consideration. Nevertheless, it was UNCITRAL's view that the Working Group was making good progress in identifying solutions. Concluding, he expressed his gratitude to the Secretary-General and Ms Wehling for the excellent and very professional support provided to this Working Group.

220. In his capacity of member of the Working Group and co-chair of the Drafting Committee, *Mr Riffard* observed that there had been considerable progress on the Model Law, and expressed his thanks to the Secretariat for the support. He noted that the drafting was advancing well and highlighted that the working methodology had focussed on drafting in both English and French, which was proving to be extremely useful because it accounted for any differences between common and civil law allowing for a draft that accommodated both approaches at an early stage. He further emphasised the excellent synergy between the Working Group and the Drafting Committee, which had facilitated the project's advancement, and encouraged optimism on the timely finalisation and ultimate quality of the future Model Law.

221. *The Secretary-General* drew the Council's attention to the fact that this Model Law was not only fully aligned with and complementary to the Model Law on Factoring, but also fit in perfectly with UNIDROIT's ongoing work on agribusiness, and even more so the proposed project on the development of a legal guide on the financing of agricultural activities. He highlighted that, although warehouse receipts legislation was in place in many jurisdictions, the Model Law could provide an important contribution in its guidance on electronic warehouse receipts and, no less important, provide an instrument which would apply to both conceptions of warehouse receipts— both single and dual—as well as to different concepts of negotiability. The Secretary-General noted that

accommodating the different legislative approaches in this respect had proven difficult, but excellent work had been done so far and the outcome would constitute an enormous contribution to legal harmonisation worldwide.

222. *Mr Gabriel* expressed his thanks to the Secretariat and the two co-chairs for the excellent work. He emphasised the proper comparative legal nature of the work being carried out in this project and stated that, in his opinion, there was no other institution as well-placed as UNIDROIT to carry out this comparative law work.

223. *The Governing Council took note of the progress made since its 100th session by the Working Group on developing a joint UNCITRAL/UNIDROIT Model Law on Warehouse Receipts. The Council authorised the proposed extension of the project for an additional calendar year in order to prepare a Guide to Enactment of the Model Law. It was agreed that, in light of the joint nature of the project, the drafts of both the Model Law and the Guide to Enactment would be taken to UNCITRAL for intergovernmental negotiation and approval at the Commission.*

224. *The Governing Council recommended retaining the formulation of a Model Law on Warehouse Receipts in the 2023-2025 Work Programme as a high priority activity until its final completion, expected in 2023, for the text of the Model Law, and 2024, for the Guide to Enactment.*

(e) Bank Insolvency ([C.D. \(101\) 9](#))

225. *Ms Thijssen* reported on the Bank Insolvency Project, noting that, following the Council's recommendation at its 100th session, the General Assembly had assigned a high priority to this project in December 2021. Accordingly, a Working Group had been established in cooperation with UNIDROIT's partner organisation for this project, the Bank for International Settlements' Financial Stability Institute (FSI). The Working Group was chaired by Governing Council Member Professor Stefania Bariatti and composed of ten expert members. In addition, the project had attracted great interest from the financial regulatory community, which had resulted in more than thirty observer institutions joining the Working Group. These included international organisations such as the IMF and the World Bank Group, and an impressive number of central banks, banking supervisors, deposit insurance corporations and bank resolution authorities from all over the world. To encourage active participation from all participants and considering the sensitive nature of issues relating to bank crisis management, the meetings were being conducted under Chatham house rules, with two reports drawn up after each session.

226. The Working Group had held two sessions over a six month period. The first session had taken place in a hybrid format on 13-14 December 2021. The discussion had been structured around an Issues Paper drawn up by the Secretariat in collaboration with the FSI, which had analysed preliminary matters, such as the interaction with existing international instruments, and the possible scope and content of the future instrument. Three thematic subgroups had been established after the first session to conduct intersessional work, and their intense activities between January and March 2022 had resulted in three reports, which served as the basis for the discussion during the second hybrid session of the Working Group on 11-13 April 2022.

227. *Ms Thijssen* recalled that the prospective output of the Working Group was a Guide that would comprehensively address the key aspects of liquidation proceedings for banks, to assist lawmakers in the design of their national bank insolvency frameworks. The future instrument would complement the bank resolution frameworks that had been introduced following the 2008 financial crisis. Regarding the scope, the Working Group had agreed that the instrument should be future proof without pre-empting ongoing policy discussion (e.g., regarding FinTechs). The guidance would therefore focus on traditional banks and deposit-taking institutions, while allowing flexibility for jurisdictions to apply it to other entities, as long as they were included in their regulatory perimeter.

The Working Group had also considered that it should be possible to apply the framework to parent companies of banks if needed.

228. *Ms Thijssen* illustrated several of the substantive matters that the Working Group aimed to address in the future guidance document. For instance, it had concluded that value maximisation and depositor protection should be the main objectives of bank liquidation frameworks, while financial stability was also a relevant consideration given the special nature of banks as compared to ordinary companies. Regarding institutional arrangements, the Working Group had agreed that it would be key to ensure an appropriate involvement of administrative authorities, such as banking supervisors and deposit insurance agencies, in the liquidation process. Their technical expertise and speed of decision-making were considered especially relevant in the period leading up to the initiation of insolvency proceedings. At the same time, the Group acknowledged that not all jurisdictions might be able to introduce administrative-based regimes due to legal traditions and constitutional constraints. It had therefore been decided that the Guide should not be too prescriptive and follow an outcomes-based, modular approach.

229. Furthermore, the Working Group had discussed that a timely intervention in failing banks was key and that the criteria for opening insolvency proceedings for banks should therefore be forward-looking to some extent. The Working Group had also discussed the timing for the withdrawal of the banking license, considering that there may be circumstances where it would be beneficial to continue part of the bank's business for a limited period of time after the insolvency process started. On insolvency tools, the Working Group had agreed that, in addition to the 'piecemeal' liquidation of a bank, it should be possible to transfer part of the bank's business to another entity in the course of the liquidation process. The future instrument would therefore provide detailed guidance on how such transfer of assets and liabilities could be facilitated. Regarding financial contracts, the key issue was whether close-out netting should be possible upon commencement of insolvency proceedings. The Working Group had concluded that, as a general principle, close-out netting should be possible. A limited exception to this general principle, in the form of a short stay, should be allowed only if needed to facilitate the application of certain tools.

230. Regarding the next steps, *Ms Thijssen* noted that the third Working Group session had been scheduled to take place in October 2022, and would be hosted by the Single Resolution Board in Brussels. In the intersessional period, the subgroups would continue their work. Furthermore, the Secretariat would develop a survey for a stock-taking exercise to be conducted within the Working Group in cooperation with the subgroups. The fourth and fifth session of the Working Group were expected to be held in 2023 and would be followed by consultations. It was envisaged that the final draft be submitted to the Governing Council for adoption in 2024.

231. In her capacity as Chair of the Working Group on Bank Insolvency, *Ms Stefania Bariatti* thanked the Secretariat for the comprehensive description of the developments concerning the Bank Insolvency project in the last months. She noted that, due to the strong expertise of the participants, the Working Group and the three subgroups had made significant progress in a short period of time, despite the sensitivity of the subtopics and the complex interaction between the rights of private stakeholders and public concerns. The Chatham house rules had been effective in facilitating an open discussion among the participants. She indicated that some of the areas of divergences within the Group reflected social and political values that were strongly rooted in legal traditions and the level of development of the financial industry of each jurisdiction, which the Working Group would need to duly take into account. In addition to the subtopics illustrated by *Ms Thijssen*, she explained that cross-border aspects were highly relevant. The Working Group had discussed crucial issues such as the cross-border recognition of judgments and administrative decisions, public policy exceptions, and non-discrimination of creditors. *Ms Bariatti* concluded her remarks by stating that the Working Group and the subgroups had done a tremendous amount of work and that she was very pleased with the result. She commended *Ms Thijssen's* knowledge of the subject matter and thanked her for the excellent coordination of the work.

232. *The Governing Council took note of the excellent progress made by the Working Group on Bank Insolvency since the Governing Council's 100th session and recommended maintaining its high priority level during the 2023-2025 Work Programme.*

(f) Legal Structure of Agricultural Enterprises ([C.D. \(101\) 10](#))

233. *Ms Priscila Pereira de Andrade (UNIDROIT Secretariat)* presented the work conducted by the Secretariat since the 100th session of the Governing Council and main achievements of the UNIDROIT/FAO/IFAD Legal Structure of Agricultural Enterprises (LSAE) project. She recalled the preparatory work that had been undertaken in previous years: (i) in 2020, a feasibility study had been presented during the 99th session of the Governing Council; (ii) in 2021, a consultation webinar had been jointly organised with the partner institutions FAO and IFAD and the recommendations presented during the 100th session of the Governing Council. She also noted that the Governing Council had agreed with the Secretariat's proposal to upgrade the status of the LSAE project to high priority to allow for the establishment of a Working Group.

234. Since the 100th session of the Governing Council, an informal exploratory meeting had been organised with a core group of experts in December 2021 to help the Secretariat prepare an issues paper for discussion during the first session of the Working Group. With regards to the composition of the Working Group, she noted that it included nine members selected for their expertise in contract law, corporate law, commercial law, and agricultural law. Economists and experts in finance, digitalisation and sustainability with regard to the agricultural sector had also been invited to join the Working Group.

235. In addition, she noted that the Working Group included four experts from FAO and three experts from IFAD, representing not only their legal departments, but also other technical divisions, such as: FAO's "Agrifood Economics Division" and "Food Systems and Food Safety Division", as well as IFAD's "Research and Impact Division" and "Inclusive Rural Finance, Markets and Value Chains Division". A significant number of international and regional intergovernmental organisations, farmers associations, non-governmental organisations, and the generally relevant private sector institutions had also been invited to participate as observers in the discussions of the Working Group.

236. Ms Andrade noted that Working Group was chaired by the Governing Council Member Justice Ricardo Lorenzetti and coordinated by Professor Fabrizio Cafaggi (Judge at the Council of State Italy and Professor at the University of Trento and LUISS) given his expertise and involvement in previous work at UNIDROIT in the field of Private Law and Agricultural Development.

237. The first session of the LSAE Working Group had taken place in a hybrid format on 23-25 February 2022 and had been attended by 40 participants. FAO's Legal Counsel and IFAD's General Counsel had participated in-person during the opening of the session to restate the importance of the tripartite partnership between FAO, IFAD and UNIDROIT. Ms Andrade informed that the Working Group had focused its initial discussions on: (i) the impact of market structure on agricultural enterprises; (ii) the role of midstream agri-MSMEs in contributing to rural transformation; (iii) the possible contractual arrangements for collaboration in agri-food supply chains and the possibility of using multiparty contracts to govern the supply chain network; (iv) the impact of sustainability, green finance and insurance on the structure of agricultural enterprises; (v) the overall impact that digital farming may have for both the internal and external functioning of agricultural enterprises.

238. The Working Group had agreed to focus the analysis of the LSAE project on improving the business environment of already formalised enterprises, as addressing the challenges they face to grow could eventually stimulate the formalisation of informal enterprises. Smaller enterprises would be the core group for which guidance would be developed, and the challenges faced by large agri-food supply chain leaders operating downstream would be analysed, if necessary. The Working Group had considered that the framing of the LSAE Guide would have to resonate with the realities and

challenges faced by actors operating in the midstream segment and give particular attention to low- and middle-income countries. Further, she informed that the Working Group had generally accepted that the guidance to be developed in the LSAE project could go beyond the “production stage”, as this had already been done in the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming. Therefore, the LSAE project would focus on the challenges faced by actors that add the most value to agri-food products and that operate on stages beyond the farm gate.

239. The prospective guidance document would consider “collaborative legal forms” that supported forms in which smallholders and agri-MSMEs would do business with one another, to access markets and improve collaboration with different agri-food chain actors. The Working Group decided to consider both horizontal and vertical collaborative ventures. In particular three categories of instruments would be considered to promote efficient commercial collaboration between parties: (i) contracts, including bundle of contracts and multiparty contracts, (ii) companies, with or without limited liability, and (iii) cooperatives. Ms Andrade noted that the Working Group had also agreed to analyse the challenges that technology (particularly digital technology) and sustainability may be placing on agri-food supply chains and their effects on the choice of legal forms of collaboration among agricultural enterprises. Finally, she explained that the Working Group had supported the idea of developing an evidence-based guidance document and, therefore, had agreed to discuss the methodology for the empirical research during its first intersessional meeting.

240. Regarding the next steps, Ms Andrade noted that three intersessional subgroup meetings would be organised before the second Working Group session, scheduled to take place on 2-4 November 2022. She noted that the Secretariat had proposed to carry over the activities concerning the LSAE project to the new Work Programme 2023-2025 and informed that the LSAE project was expected to be developed over five Working Group sessions until May 2024, followed by a period of consultations before submitting the complete draft for adoption by UNIDROIT, FAO and IFAD.

241. In his capacity of Chair of the LSAE Working Group, *Mr Lorenzetti* thanked the Secretariat, FAO, IFAD and Professor Cafaggi for all the work undertaken. He appreciated the geographical balance achieved in the composition of the Working Group and the participation of non-legal experts, who had lent their practical perspectives on the main challenges that the guidance document could cover. He noted that during the first session of the Working Group there had been constructive presentations by members of the Working Group to guide the discussions. In particular, he noted that the discussion on sustainability and the impact of digitalisation had been enlightening to understand the transformations occurring in the agricultural sector and to confirm the need to adapt the internal and external functioning of agricultural enterprises.

242. He informed that the Working Group had generally accepted that the project could cover cases of interdependence among supply chain actors and collaborative legal structures for the allocation of profits and risks along the agri-food chains. He noted that the Working Group had also considered that the current title of the project may need to be adapted in the future to reflect the content developed. He agreed that the intersessional meetings would contribute to identify additional empirical evidence and to solve open questions. Recalling the objectives of the project, he noted the challenges of clearly identifying the issues of private law that would benefit from further international guidance. He clarified that the purpose of the legal guide would not be to identify the best collaborative legal structure, but the available alternatives.

243. *The representative of FAO* welcomed the continued partnership with UNIDROIT and IFAD in the area of private law and agriculture development. He noted the progress that had been made and expressed his belief that the intersessional work would be useful to further clarify the scope and content of the guidance document. He confirmed that value of the project for FAO and its alignment with the “Four Betters” 2022-2031 Strategic Framework (Better Production, Better Nutrition, Better Environment, and Better Life). He emphasised that FAO appreciated the approach of developing a legal toolkit focused on contracts, companies and cooperatives. He reiterated the value of the

previous legal guides that had been developed under the tripartite partnership and noted that FAO would continue collaborating with the Working Group.

244. *The representative of IFAD* evoked the satisfying results already obtained under the tripartite cooperation between IFAD, UNIDROIT and FAO for the development of the Legal Guide on Contract Farming and Legal Guide for Agricultural Land Investment Contracts. He noted that the office of the General Counsel of IFAD and the Strategy and Knowledge Management Department had been in constant engagement with the UNIDROIT Working Group for the development of the third Legal Guide on Agricultural Structures, providing inputs and comments on the documents prepared and sharing practical data with the UNIDROIT Secretariat.

245. *Mr Sánchez Cordero* congratulated Mr Lorenzetti for his chairmanship of the Working Group and recognised the challenges of the LSAE project as the private law issues were not that easily identifiable.

246. *The Governing Council took note of the developments relating to the joint UNIDROIT/FAO/IFAD project on the Legal Structure of Agricultural Enterprises (LSAE), in particular regarding the composition of the Working Group and the progress made for the definition of the scope and content of the prospective guidance document.*

247. *The Governing Council agreed to recommend maintaining the high priority level of the LSAE project in the 2023-2025 Work Programme, until its final completion, expected in 2024.*

(g) Principles of Reinsurance Contracts [\(C.D. \(101\) 11\)](#)

248. *The Deputy Secretary-General* briefly presented Doc. C.D.(101) 11 on the Principles of Reinsurance Contracts (PRICL) recalling that it had been recommended for the 2020-2022 Work Programme by the UNIDROIT Governing Council at its 98th session in 2019 and adopted by the General Assembly at its 78th session in the same year.

249. She noted that while the insurgence of the COVID-19 pandemic had severely limited the activities of the Working Group in 2020, work had resumed with the 8th Workshop of the project that had been held remotely on 18 January 2021, as well as with other events such as the second lecture in the Transatlantic Lectures on Insurance Law (ATILA) series that had been organised by the Insurance Law SIG at the ELI in cooperation with the PRICL Working Group, with participation of the UNIDROIT Secretariat. Additionally, the Working Group had discussed the issue of Limitation Periods, for which the reference to the UNIDROIT Principles had been considered to provide satisfactory default provisions.

250. Ms Veneziano noted that the project leaders had received formal authorisation to use the unspent funding for an additional year, with an allowance to extend the period by a further year until completion of the publication, which was expected by 2024. Consequently, the Secretariat had invited the Governing Council to consider the continuation of UNIDROIT's participation in the project during the 2023-2025 Work Programme until its completion, as a low priority activity and under the same conditions as before.

251. The Deputy Secretary-General finally informed the Council that the next PRICL Working Group meeting had been planned for 13-15 July 2022 and was expected to address the final draft on the period of reinsurance contracts, a draft of the back-to-back clause, as well as the way forward of the project, including consultation and dissemination activities to be held in the second half of 2023.

252. *The Governing Council took note of the Secretariat's report on the status of the project on the Principles for Reinsurance Contracts (PRICL) and recommended retaining it at the current low*

level of priority, authorising the participation of the Secretariat in the project under the same conditions as before, to ensure its completion during the course of the 2023-2025 Triennium.

(h) Private Art Collections ([C.D. \(101\) 12](#))

253. *The Secretary-General* presented the topic relating to Private Art Collections, which had been in the Work Programme for several years. Following preparatory work on this matter, the Secretariat had identified the subject of orphan objects as the one in need of transnational legislative attention. The need to work on a definition of orphan objects, the role of the provenance, the legal status of the orphan objects in art collections, and the definition of a due diligence when acquiring orphan objects had been earmarked as issues that could conform the scope of the project. The scope was very much in line with the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, in particular on aspects concerning proof and the role of databases, as well as time limitations of claims concerning orphan objects. Following discussions and consultations that had taken place, the Secretariat was in favour, subject to the identification of sufficient resources, of upgrading the project and beginning work with a reduced Working Group. He then gave the floor to Professor Marc-André Renold, Director of the Art-Law Centre of the University of Geneva, who had been working with UNIDROIT on this issue and was attending the Governing Council session as a guest for the purposes of the discussion on private art collections.

254. *Professor Renold* confirmed the need to intervene in this field in light of the fact that collectors, as well as museums, dealers and, more generally, the market, were increasingly facing the issue of what to do with objects that they had acquired and held in their collection, but that had a major gap in provenance. UNIDROIT had been in close contact with the Art-Law Centre of the University of Geneva, as well as the Fondation Gandur pour l'Art, which was a major private foundation in Europe. The three institutions were about to establish a cooperation agreement to move ahead in legal research on the different issues that the Secretary-General had presented. Two conferences had already been held in 2017 (Rome) and 2019 (Gdansk), and another major event had been organised in Geneva in February 2021. Recalling the importance of the issue of provenance of cultural heritage, Professor Renold underlined the connection with the 1995 UNIDROIT Convention (Art. 4(4) on due diligence, and Article 3(3) on provenance) and the clear need for guidance, which had been expressed by collectors and States alike. In the end, the goal might be to enhance the ratification process of the 1995 UNIDROIT Convention in art market States, which were still not most prone to ratifying the 1995 Convention. Based on such considerations, Professor Renold called upon the Governing Council to recommend upgrading the topic in the Work Programme to allow the establishment of a Working Group to develop the matter further.

255. *Mr Sánchez Cordero* recalled the conference that had been organised in Rome in 2017, with the International Society for Research on Art and Cultural Heritage Law (ISCHAL), and informed the Council that the Proceedings had just been published. He also reminded the Council that the 1995 UNIDROIT Convention was a very successful instrument, which had, for the first time in any international law on cultural property, introduced the notion of due diligence. It was a tool to implement the UN Security Council resolutions adopted under Chapter VII of the UN Charter, stating that the safeguard of cultural property was essential to keep the peace and international security. He underlined that his country, Mexico, was organising MONDIACULT 2022 with UNESCO in September 2022. This was an important conference in which UNIDROIT would be invited to speak with many Ministers of Culture of the world to explain the importance of the 1995 UNIDROIT Convention, enhance its visibility at international level and bring the focus of public domestic policy on efforts to enforce regulations, including private art collections.

256. *Mr Sanchez Cordero* also indicated that he had recently participated in an event of an International Academy of Comparative Law, during which the participating professors of private law from different countries had agreed on the importance of the subject of orphan objects. He concluded

by asking the Governing Council to recommend upgrading the priority of the project on Private Art Collections and to establish a Working Group.

257. *Ms Sabo* thanked the Secretariat for developing this proposal, which she was very happy to support. She indicated that orphan cultural objects were an issue of great interest to Canada, especially with regard to indigenous cultural property that was already present in private and public collections. She suggested to broaden the focus to address both private and public art collections. She finally supported changing the priority level of this project to a medium priority level.

258. *Mr Moreno Rodriguez* indicated that he seconded the motion to upgrade the project for the reasons that had been exhaustively explained. He was aware that this topic had been addressed in a recent event organised by the International Academy of Comparative Law, which conveyed a sense of strong endorsement on the part of the academic community.

259. *Mr Meier* also expressed his support. Even though the title referenced to private art collections, he noted that it remained a project of public interest because it would help prevent illicit trafficking.

260. *The representative of ICCROM* welcomed this very timely initiative and looked forward to finding ways of collaboration on this topic.

261. *The Secretary-General* recalled that the Governing Council needed to define the priority of this project alongside with the other projects. He agreed with *Ms Sabo* that this would be upgrade to medium priority for the time-being, because of the six other ongoing projects, which would mean that a Working Group could be convened, but with very limited resources allocated. He noted that new resources to cover the expenses could be identified. The Secretary-General indicated that in terms of human resources of the Secretariat, the person in charge of this would be Principal Legal Officer, *Ms Marina Schneider*.

262. *Ms Sabo* wished to put on the record that her government had indicated an interest in contributing expertise to the Working Group, which the Secretary-General gratefully acknowledged.

263. *Professor Renold* indicated that the Proceedings of the conference hosted by UNIDROIT in 2017 on “*Les collections privées: approches historique et juridique*” had just been published. Regarding recent developments since the last meeting of the Governing Council, he mentioned the conference that had been organised in March 2022 in Tel Aviv, co-organized by the Tel-Aviv Harry Radzyner Law School, to which the three partners of the project had been invited, that is UNIDROIT, the University of Geneva and the Fondation Gandur pour l’Art. On the same occasion, a presentation on orphan objects had been made during the side event at the Tel Aviv Museum. Also, *Ms Marina Schneider* from the UNIDROIT Secretariat had presented the project in April 2022 in Mexico, at an important conference entitled *Culture et droit* organised by Governing Council Member *Mr Jorge Sánchez Cordero*. He noted that, immediately after the conclusion of the 101st session of the Governing Council, the three partners would start working on drafting the cooperation agreement to allocate the responsibilities and would organise a Working Group with the relevant stakeholders including representatives from the art market. The first meeting of the Working Group was planned in September 2022.

264. *The Secretary-General* clarified that the upgrade of the project would only take effect on the 1st of January 2023, subject to the General Assembly’s confirmation, which would mean that any activity undertaken in 2022 would require external financing.

265. *The Governing Council supported the Secretariat’s request to upgrade the priority of the project on Private Art Collections and recommended it to be made a medium priority project, with several Governing Council Members recognising the importance of this topic. It was agreed that the*

work would focus on orphan objects, and that only a limited amount of resources would be allocated to the project for the establishment and the activities of the Working Group. It was noted that the project would be supported by the Fondation Gandur pour l'Art and the Art-Law Centre of the University of Geneva.

Item 6: International Interests in Mobile Equipment

(a) Implementation and status of Cape Town Convention and the Aircraft Protocol

266. *The Secretary-General* introduced the most recent developments regarding the Cape Town Convention and the Aircraft Protocol. He drew the Governing Council's attention to the newly discovered functionality of the Aircraft Protocol in the context of the crisis of the airline sector caused by the COVID-19 pandemic, noting that, by strengthening their position vis à vis the troubled debtor, the Protocol had allowed Cape Town creditors to contribute to the rescue of viable companies, while maximising the value of their claims. He also informed that the 5th edition of the Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol thereto on Matters Specific to Aircraft Equipment would be launched by Professor Sir Roy Goode during the 101st session of the Governing Council. He noted that the new edition of the Official Commentary had been considerably enhanced, including the discussions held in courts regarding insolvency related matters.

267. As depositary of the Cape Town Convention and its Protocols, he announced that in February 2022 the Russian Federation had suspended the application of the treaty.

268. *The Governing Council took note of the extraordinary activities undertaken regarding the Cape Town Convention and the Aircraft Protocol.*

(b) Implementation and status of the Luxembourg Rail Protocol and of the Space Protocol ([C.D. \(101\) 13](#))

269. *The Deputy Secretary-General* presented the item detailed in the first part of Document C.D. (101) 13, and reported that the Secretariat had continued to work to ensure the timely preparations for the entry into force of the Protocol, also through the excellent cooperation with the co-sponsoring agency, the Intergovernmental Organisation for International Carriage by Rail (OTIF), as well as the Co-Chairs of the Preparatory Commission and the Rail Working Group. She was pleased to inform that, since the Governing Council's 100th session in September 2021, the expected two signatures of the Treaty had been deposited, namely by Spain and South Africa, and that both countries were working towards speedy ratification of the Protocol.

270. In relation to the setting up of the Registry, she recalled that, upon a mandate conferred at the 10th Session of the Preparatory Commission, jointly convened by UNIDROIT and OTIF via e-mail confirmation procedure, a Negotiating Team had been set up in order to conduct negotiations in relation to a proposed change of ownership or control of the Registrar-designate, in accordance with Art. 17 of the Contract for the Establishment and the Operation of the International Registry for Railway Rolling Stock. The Secretariat had actively participated in several remote meetings of the Negotiating Team and several in-person and remote workshops had been organised to ensure that the work would progress and that an agreement would be reached on the necessary adjustments to the existing contracts. Ms Veneziano noted that, upon the successful conclusion of the negotiations, a Preparatory Commission session would be convened later that year to approve the change of ownership or control, as well as the proposed adjustments to the contracts, while the entry into force of the Protocol would be sanctioned by a subsequent, and last, Preparatory Commission session to be held back-to-back with the first meeting of the Supervisory Authority.

271. The Deputy Secretary-General further reported on the fourth and the fifth meeting of the Group of Experts on the Unique Rail Vehicle Identification System of the Luxembourg Rail Protocol (URVIS) ("Group of Experts on Permanent Identification of Railway Rolling Stock" or "GE_PIRRS"), established by the UN ECE Inland Transport Committee, which had been held respectively on 13-14 September 2021 and on 4-6 May 2022, with the participation of the Secretariat. At the latter session, the Working Group had discussed a draft set of Model Rules as well as a first draft of Terms of Reference for the Revision Committee, which had been further refined at an informal draft meeting held on 1-2 June 2022. She informed the Council that the next (and presumably last) session of the Group of Experts was planned for August 29-30 2022, and that the completed draft would be then sent to the UN ECE Inland Transport Committee Working Party on Rail Transport for approval.

272. Ms Veneziano concluded her presentation by referring to the Annual Report 2021 and to document C.D. (101) 13 for all additional information on the promotional activities with participation of the Secretariat, as well as on the support of the Luxembourg Rail Protocol by other institutions, particularly the EU Council in its conclusions of 3 June 2021 and the EU Commission through its "Action plan to boost long distance and cross-border passenger rail" launched on 14 December 2021, which contained a clear commitment to support the swift implementation of the Protocol across the European Union.

273. *The representative of OTIF* intervened to confirm that OTIF continued to be very involved in the work towards the entry into force of the Luxembourg Rail Protocol, and that it was very satisfied with the cooperation with UNIDROIT and the Rail Working Group. She informed the Council that OTIF was setting up all necessary steps to perform its role as the Secretariat of the future Supervisory Authority of the Registry for the Protocol.

274. With regard to the Space Protocol, *Mr Hamza Hameed* noted that several positive developments had taken place since the last Governing Council session. This included the conclusion of a MoU between UNIDROIT and the United Nations Office for Outer Space Affairs, primarily to increase collaboration in the area of private law and secured transactions law in the space sector, as well as advance UNIDROIT's participation at the United Nations Committee on the Peaceful Uses of Outer Space. Furthermore, UNIDROIT's status as a Permanent Observer at COPUOS had been confirmed by the United Nations General Assembly, and in 2022, UNIDROIT had delivered its statement both at the COPUOS Legal Subcommittee, and the COPUOS General Assembly, where it had underscored the importance of the Space Protocol and the need for a uniform system of secured transactions law in the space sector. Additionally, UNIDROIT had also presented the Space Protocol at the UN/Chile Conference on Space Law and Policy on 11 May 2022. The Space Protocol had been chosen as the subject matter for the 2022 edition of the Manfred Law Space Law Moot Court, which had seen the UNIDROIT Secretariat extraordinarily teaching the Space Protocol at several universities around the world. The Secretariat also continued to present the Space Protocol at various important international conferences, including the International Astronautical Congress, which had taken place in Dubai in October 2021.

275. Mr Hameed concluded by noting that interest in the Space Protocol was growing steadily. The Government of Malta had recently decided to adopt a system very similar to the Space Protocol into their domestic space policy, whereby once the Space Protocol entered into force and was adopted by the EU, Malta would be able to subscribe to the system through a quick and seamless transition. UNIDROIT had also been working with other governments, mostly from new space countries with emerging space economies, who were looking to adopt tools to provide for greater access to credit for their space industries.

276. *The Council welcomed the information provided by the Secretariat on the Institute's depositary functions and on the activities undertaken to promote the implementation of both the Luxembourg Rail Protocol and the Space Protocol.*

277. *The Governing Council recommended maintaining the implementation of the Rail and Space Protocols in the 2023-2025 Work Programme at its current high priority level.*

(c) Implementation and status of the Protocol on Matters specific to Mining, Agricultural and Construction Equipment (MAC Protocol) ([C.D. \(101\) 14](#))

278. *Senior Legal Officer William Brydie-Watson* introduced the topic, with reference to document C.D. (101) 14. He explained that the 17 States comprising the MAC Protocol Preparatory Commission were focused on four specific matters: (i) the appointment of a Supervisory Authority, (ii) the appointment of a Registrar, (iii) the adoption of Registry Regulations and iv) implementation and promotion of the MAC Protocol. He noted that during 2020 and 2021 the Secretariat had focused on rapidly progressing the three technical requirements for entry into force, as States were focused on their responses to the COVID-19 pandemic which made ratification progress difficult. As a result, it was explained that the three technical matters were well progressed. Specifically, Mr Brydie-Watson noted that (i) the Secretariat had undertaken intense work on matters relating to the appointment of a Supervisory Authority which would be discussed by the Governing Council later at its 101st session, (ii) the tender process to select a Registrar for the future MAC Registry had commenced, and (iii) the draft Registry Regulations were well developed and had been approved twice by the Preparatory Commission. Mr Brydie-Watson emphasised that now was the time to focus on ratification, as States emerged from the COVID-19 pandemic and were looking for ways to stimulate economic growth. He explained that the Secretariat had prepared a four-pronged ratification strategy based on (i) re-energisation of the private sector, (ii) promotion of the MAC Protocol as a tool that addressed broader international issues, (iii) utilisation of international and regional fora to promote the instrument and (iv) the provision of targeted technical assistance to those States which appeared well positioned to implement the Protocol in the next 24-36 months. Mr Brydie-Watson concluded by asking Governing Council Members to lobby the governments in their States to consider ratifying the Protocol.

279. *Mr Hamza Hameed* provided an update to the Governing Council regarding the procurement process to select a Registrar. He emphasised that the Request for Proposals (RFP) document inviting prospective registrars to submit proposals had undergone a comprehensive drafting and evaluation process, involving an evaluation of the RFPs for the selection of the Registrars under the Aircraft Protocol and Luxembourg Rail Protocol and domestic RFPs. The RFP had been reviewed by relevant experts in Australia, Ireland, the United States and by the International Civil Aviation Organisation (ICAO), before being approved by the Registrar Working Group and the MAC Preparatory Commission itself. He explained that the RFP was published on 21 March 2022 and that proposals were due on 21 July 2022. He concluded that there appeared to be a strong level of interest from a number of prospective bidders, based on (i) the high level of attendance at a virtual solicitation conference organised by the Secretariat on 1 April, and (ii) the high number of requests for clarifications that had been submitted by interested parties.

280. *Mr Sanchez Cordero* noted that the MAC Protocol was projected to have immense economic benefits for Mexico, and that the Mexican government was actively considering the instrument.

281. *Mr Gabriel* thanked the members of the Preparatory Commission and the Secretariat for their work. He noted that given the MAC Protocol had been adopted in late 2019, the possibility of having a registrar appointed by early 2023 was an outstanding achievement, particularly given the global challenges that arose in 2020 and 2021.

282. *Sir Roy Goode* thanked the Secretariat for its update. He suggested that as part of the Secretariat's ratification strategy, the MAC Protocol should be promoted as an instrument that would immensely benefit African States by developing their commercial agriculture sectors, which were currently constrained by a lack of access to finance to acquire modern equipment.

283. At a later stage during the Governing Council session, the Secretary-General announced that he had been informally informed by the French Presidency of the European Union that the European Union had just approved the signature of the MAC Protocol.

284. *The Governing Council took note of the progress made by the Preparatory Commission and the Secretariat on the implementation of the MAC Protocol.*

(d) Appointment of a Supervisory Authority for the MAC Protocol registry
([C.D. \(101\) 15](#))

285. *The Secretary-General* introduced the topic, with reference to document C.D. (101) 15. He reminded the Governing Council that, at the time the MAC Protocol was adopted in 2019, it had been anticipated that the International Finance Corporation (IFC) was best positioned to perform the role of Supervisory Authority of the MAC Registry. However, due to a change of leadership and strategy at the IFC, the organisation had been unable to accept the role. Once the IFC had declined, the Preparatory Commission had been unable to identify another existing organisation to undertake the role, primarily because the MAC Protocol covered the mining, agriculture and construction sectors and there was no international authority who was responsible for all three sectors. As a result, the Preparatory Commission had asked UNIDROIT to consider whether it would be willing to accept the Supervisory Authority role. The Secretary-General further reminded the Governing Council that, at its 100th session in September 2021, the Governing Council had been unable to decide whether UNIDROIT could accept the role of Supervisory Authority.

286. The Governing Council had requested that the Secretariat prepare a detailed explanation of what the role would actually entail for UNIDROIT (the UNIDROIT model), and an assessment of whether it would be preferable to establish a separate entity to perform the role of Supervisory Authority, as consistent with the approach under the Luxembourg Rail Protocol (the Rail Protocol model). The Secretary-General explained that, to provide the Governing Council with additional information on exactly what the Supervisory Role entailed, the Secretariat had closely consulted with ICAO on how it discharged its Supervisory Authority functions under the Aircraft Protocol, as ICAO was the only actual operating Supervisory Authority under the Cape Town Convention system.

287. *Mr Hamza Hameed* introduced how ICAO exercises its functions as Supervisory Authority of the Aircraft Protocol, emphasising that the formal Supervisory Authority functions were discharged by the ICAO Council, although the vast majority of the technical work was undertaken by the ICAO Secretariat and the independent Commission of Experts.

288. *The Deputy Secretary-General* introduced the Secretariat's research on the Rail Protocol model highlighting that the analysis provided by the Secretariat was based on the foundational documents, as the Supervisory Authority under the Luxembourg Rail Protocol was not yet in existence, the Luxembourg Rail Protocol not yet being in force. She explained that the Rail Protocol model had been developed to respond to the particular circumstances of the OTIF, and that the Rail Protocol model required a number of additional steps and agreements to establish a new entity, whereby an existing intergovernmental organisation was entrusted with the role of being the Secretariat of a Supervisory Authority, a separate body composed of States. While OTIF was considered to be a natural candidate for the role, questions had been raised regarding whether it had sufficient geographical representation in its membership to ensure that the Supervisory Authority would fully represent all expected Contracting States. Furthermore, the solution was contained in the Protocol itself, which in its Art. XII set out that a new body would be established to undertake the role of Supervisory Authority (paragraph 1), with the OTIF performing the role of Secretariat (paragraph 6). It further stated that the operation of the Supervisory Authority was governed by its Statute and its Rules of Procedure. The Secretariat finally pointed out that while this model presented a viable alternative, it did also impose additional administrative, institutional and public international

law challenges that would have to be specifically addressed should UNIDROIT be called to undertake the role of Secretariat to the Supervisory Authority of the MAC Protocol.

289. *Senior Legal Officer William Brydie-Watson* explained that the Secretariat had considered both the UNIDROIT model and the Rail Protocol model as viable options. He noted that both models had a large number of common benefits, such as no legal liability, no costs for UNIDROIT and a significant role for the UNIDROIT Secretariat. He concluded that having analysed the strengths and weaknesses of both models, the Secretariat was of the view that given (i) the limited specific benefits of the Rail Protocol model, (ii) the legal uncertainties around its legislative basis, (iii) the complexities of creating a new international entity and (iv) the higher administrative burden, that the UNIDROIT solution was a preferable option. The Secretary-General advised the Governing Council that there was some uncertainty around whether adopting the Rail Protocol model for the MAC Protocol would require ratifying States to undertake an additional domestic approval process to become members of the Supervisory Authority, on the basis that the MAC Protocol did not specifically provide for the creation of a new international entity.

290. *Mr Gabriel* stated his unequivocal support for UNIDROIT undertaking the role of Supervisory Authority for the future MAC Protocol Registry. He suggested that UNIDROIT should replicate the ICAO arrangements in discharging the Supervisory Authority functions, as opposed to establishing a new international entity under the Rail Protocol model. He emphasised that it was essential to not delay the entry into force of the MAC Protocol over this technical issue.

291. In a statement read by Mr Gabriel, Mr Hartkamp expressed his support for UNIDROIT undertaking the Supervisory Authority role, on the basis that no other existing organisations were able to accept the role and that UNIDROIT would not incur any expenses in performing the Supervisory Authority role that were not fully remunerated from external sources.

292. *Mr Moreno Rodriguez* joined Mr Gabriel and Mr Hartkamp in their support for UNIDROIT undertaking the role of Supervisory Authority.

293. *Mr Meier* thanked the Secretariat for the detailed document and raised a number of further issues. First, he queried whether additional days would have to be added to the annual Governing Council meeting if it were decided that the Governing Council should discharge the Supervisory Authority functions on behalf of UNIDROIT. Second, he also queried whether there could be a conflict of interest between UNIDROIT's obligation to promote the MAC Protocol and its possible role as Supervisory Authority of the MAC Registry. Third, he also queried whether the immunities provided to the Supervisory Authority would fully protect UNIDROIT from liability, should it accept the role of Supervisory Authority. He concluded by suggesting that, while further detailed consideration of how exactly UNIDROIT would discharge the function was required, he would be willing to join the consensus of his colleagues on this matter.

294. *The Secretary-General* thanked Mr Meier for his comments. He noted that there were different options for how UNIDROIT could perform the Supervisory Authority functions if it were appointed, as set out in Annexe 1 of the document. He suggested that there could be no possible conflict of interest between UNIDROIT's responsibility to promote its instruments and its potential responsibilities as Supervisory Authority, as the Supervisory Authority functions were limited to overseeing the Registry and did not have a wider supervisory role in relation to the MAC Protocol itself. In relation to immunities, the Secretary-General noted that, if UNIDROIT were appointed as Supervisory Authority, it would be fully covered by the immunities provided for under its Statute and by the Cape Town Convention and MAC Protocol. He explained that, conversely, if the Secretariat were to adopt the approach of the Rail Protocol, a new international body would have to be created and domiciled in Rome under the UNIDROIT Statute, in which case new immunities might have to be negotiated with the Italian Government.

295. *Mr Leinonen* thanked the Secretariat for its work in preparing the detailed document submitted to the Governing Council. He noted that he had expressed some doubts regarding whether UNIDROIT should accept the role of Supervisory Authority at the previous Governing Council session. He explained that while many further questions had to be addressed, he was supportive of a provisional decision that UNIDROIT could perform the role of Supervisory Authority, in order to allow the Secretariat to progress the matter and provide further information for the Governing Council to make a final decision at its 102nd or 103rd session. He concluded by noting that it was important for the Governing Council to provide guidance to the Secretariat on the preferred model, and that in his opinion the UNIDROIT model was preferable to the Rail Protocol model.

296. *Mr Patrick Kilgariff* reaffirmed the support he had expressed at the Governing Council's 100th session in September 2021 for UNIDROIT accepting the role of Supervisory Authority. He concluded that while there were open questions that required further consideration, it was important for the Governing Council to empower the Secretariat to make progress on this matter at the current session.

297. *Ms Shi* expressed support for UNIDROIT undertaking the role of Supervisory Authority. She noted that the detailed document provided to the Governing Council provided sufficient clarity for the Council to take action. She concluded that taking into consideration the elements of flexibility, legal certainty, administrative burden and costs, the UNIDROIT model was preferable to the Rail Protocol model.

298. *Mr Bollweg* suggested that there was no need for the Governing Council to rush a decision and that there was sufficient time to consider the matter in further depth at future Council sessions. Mr Bollweg noted that it was unlikely that the MAC Protocol would come into force for 4-7 years at the earliest. He thanked the Secretariat for its balanced oral introduction to the discussion, but also expressed concern that the document provided to the Governing Council was not as balanced, addressing only the weaknesses of the Rail Protocol model and not the benefits. He agreed with the Secretariat's conclusion that both options were viable, but disagreed that the UNIDROIT model should be considered as preferable. He suggested that the Rail Protocol model was the more flexible solution as establishing a special body to discharge the Supervisory Authority functions was more flexible than relying on UNIDROIT's existing bodies to perform the role. He also noted that UNIDROIT already had experience in setting up the Rail Protocol model, whereas the UNIDROIT solution was entirely new and therefore more uncertain.

299. He explained that he had responsibility for Germany's involvement with ICAO, that the ICAO Council was not significantly involved in the discharge of the Supervisory Authority functions and that a separate administrative unit established within the ICAO Secretariat did the majority of the work. Mr Bollweg emphasised that the largest issue remained that no extra-budgetary funding had been offered for UNIDROIT to undertake the role and that UNIDROIT Member States could not under any circumstances be expected to fund UNIDROIT performing the Supervisory Authority functions. He concluded that there might be merit in a smaller expert group being formed to further consider all of the relevant matters.

300. *Ms Sabo* expressed a preference for creating an independent body to undertake the Supervisory Authority role, as consistent with the Rail Protocol model. She noted that Canada was interested in the MAC Protocol as it would provide economic benefits for the country and hoped that the MAC Protocol would enter into force. She thanked the Secretariat for its document, but suggested that it focused on which model had the easiest administrative solution and would yield the fastest result. She suggested that the perspective of Member States needed to be given further consideration. She suggested that the Governing Council needed to consider what was in the best interest of the Institute, not just what was in the best interest of the MAC Protocol. She expressed concern that if UNIDROIT undertook the Supervisory Authority function that it would create an expectation in relation to future Cape Town Convention Protocols that UNIDROIT should be the Supervisory Authority, which would not be in the best interests of the Institute. She suggested that

it could not simply be the UNIDROIT Governing Council discharging the functions as it would not include States, and that it was not clear how MAC Protocol Contracting States who were not UNIDROIT Member States would be involved in the process if UNIDROIT were to be appointed as Supervisory Authority. She further suggested that the Rail Protocol model was the more representative solution. She noted that an additional benefit of the Rail Protocol model was that in the future UNIDROIT may not have to be the Secretariat to the Supervisory Authority, as MAC Protocol Contracting States might wish to establish an independent Secretariat. Ms Sabo concluded that based on her initial consultations, the lack of any specific provision in the MAC Protocol providing for the establishment of an independent body to perform the role of Supervisory Authority was not a legal obstacle to the creation of such a body.

301. *The Secretary-General* defended the Secretariat's paper. He explained that the Secretariat had undertaken significant effort in good faith to deeply examine both options in a balanced manner. He emphasised that the Secretariat did not have a bias for either model, but had merely drawn conclusions and explained which model had more benefits, based on the analysis it had undertaken. He reminded the Governing Council that the UNIDROIT Secretariat had never expressed a desire to become the Supervisory Authority for the MAC Protocol Registry, and had reluctantly considered the issue based on a direction from the MAC Preparatory Commission after it became clear that all other relevant existing bodies were unable to undertake the role. In relation to the technical issues raised, he clarified that UNIDROIT had separate legal personality so it would be the Institute itself that would be appointed as the Supervisory Authority, and that UNIDROIT organs could only undertake specific functions. He suggested that under the Rail Protocol model, a separate legal institution would have to be created to be appointed as Supervisory Authority domiciled at the UNIDROIT headquarters, and there were uncertainties regarding this situation.

302. He explained that the Rail Protocol model had been a solution of compromise, that allowed OTIF to perform a key role in relation to the Supervisory Authority without being directly appointed as Supervisory Authority. He further explained that the strength of the Rail Protocol solution was that it was *ex ante* determined in the Luxembourg Rail Protocol itself, and this created a direct link between Contracting States and membership in the Supervisory Authority, noting that, however, the MAC Protocol had not included an equivalent declaration so countries ratifying the Protocol could not be deemed to have accepted membership of the Supervisory Authority. He concluded that should the Governing Council be unable to make a decision on the preferred model and decide that a smaller group of experts should be created to progress the issue, it would be important to include public law experts from Governments to consider the various treaty and institutional issues.

303. *Mr Leinonen* noted that in his opinion the Secretariat had provided the Governing Council with a strong, balanced paper and that he did not have the sense that the issue was being rushed. He agreed with Mr Bollweg that it could take at least 3-4 years for the MAC Protocol to enter into force, so there was the opportunity for the Governing Council to give this matter further consideration at a subsequent meeting. He concluded that the Governing Council had only been asked to indicate a preference for one of the models at the current session in order to allow the Secretariat to take the matter forward in a constructive manner.

304. *Ms Bariatti* queried whether Article XIV(2) of the MAC Protocol required a Conference of Signatory and Contracting States to be convened to designate the Supervisory Authority. The Secretary-General explained that Article XIV(2) related to the appointment of a new Supervisory Authority if the initial Supervisory Authority appointed by the Preparatory Commission became unable or unwilling to perform the role. He noted that Resolution 2 of the MAC Protocol Diplomatic Conference Final Act made it clear that the MAC Preparatory Commission in its role as Provisional Supervisory Authority had responsibility for appointing an international organisation to become the initial Supervisory Authority.

305. *Mr Moreno Rodriguez* noted that he was deeply involved in the ratification process in Paraguay and explained that the Paraguayan Ministry of Foreign Relations did not want to progress ratification until a Supervisory Authority was appointed and the Registry was operational. He suggested that other States would be in the same situation. He strongly urged the Governing Council to agree that UNIDROIT could undertake the role of Supervisory Authority, as delaying the appointment of a Supervisory Authority would delay the economic benefits that Paraguay and other emerging economies that stood to gain from the entry into force of the Protocol.

306. *The President* summarised the discussion. She noted that the Governing Council did not appear to be in a position to express a very clear preference between UNIDROIT or a new body to be established undertaking the role of Supervisory Authority. She noted that the Secretariat had done its best to provide the Governing Council with the information it required to make a decision, and that at this point it was not reasonable to simply request that the Secretariat undertake further research on the matter. The President proposed that a small committee of interested Governing Council Members and external experts be created to progress the issue and provide recommendations to the Governing Council at its 102nd session in 2023, in order to allow the Governing Council to make a definitive decision. She noted that the small Governing Council group should also include public law experts from Governments, as suggested earlier by the Secretary-General.

307. *Ms Bariatti* supported the proposal of creating a small committee to progress the matter and indicated her willingness to participate in the committee. *Ms Sabo* also supported the creation of a committee and suggested that the matter might also need to be considered by the UNIDROIT General Assembly. The President responded that the General Assembly might need to be involved at some point, but was not well positioned to take the lead on progressing this matter.

308. *Mr Moreno Rodriguez* suggested that the Governing Council committee should be empowered to take a decision on this matter on behalf of the Governing Council in order to allow a proposal to be made to the UNIDROIT General Assembly, at its next meeting in December 2022.

309. *Mr Leinonen* suggested that it was important for the full Governing Council to reconsider the matter at its 102nd session in 2023.

310. *The Governing Council decided to create an ad hoc committee, composed of interested Governing Council Members and public international and treaty law experts, who would be appointed with the assistance of Member States, to discuss the unresolved public international law matters. The conclusions of the committee would feed into the document to be presented in the next session of the Governing Council.*

Item 7: International Protection of Cultural Property: implementation and status of the 1995 Convention ([C.D. \(101\) 16](#))

311. *The Secretary-General* referred to document C.D. (101) 16, which presented the activities that had been successfully done in the past year to promote the 1995 Convention and related activities. He indicated that three new States had acceded to the 1995 Convention: Togo, Madagascar and Mexico, and thanked Governing Council Member and former President of the General Assembly, *Jorge Sánchez Cordero* for his advocacy with the Mexican Government and institutions. The Secretary-General also referred to the efforts of support in cooperation with UNESCO as reported in the document, and in particular the focus put on Africa in cooperation with the African Union and ECOWAS. Several African countries had become parties to the 1995 Convention as a result. He also underscored the collaboration with ICCROM and thanked its representative for the excellent cooperation through the years.

312. *Ms Sabo* asked the Secretary-General to convey the appreciation of all the Members of the Governing Council, particularly to Marina Schneider, for her efforts, which were most appreciated and successful.

313. *Mr Sánchez Cordero* joined Ms Sabo's in congratulating Ms Schneider for her outstanding work in the international arena in difficult times. He emphasised that the next step will be to raise awareness on UNIDROIT and its instruments in the field of cultural property at MONDIACULT 2022 which will be organised by Mexico and UNESCO in September that year. In fact, all the ministers of culture had been invited to listen to the Secretary-General explaining the importance of this Convention and of its ratification. Mr Sánchez Cordero noted that almost all States in Latin America were already Party to the 1995 Convention and that he hoped that Chile and Uruguay, still missing, would soon announce their accession. Finally, he indicated that one of the main problems in Latin America was the Maya region, which juxtaposed different local legal regimes to cultural units and fostered illicit trafficking in the region. Under the UNIDROIT Convention, Mexico intended to create a culturalist community in the Latin America region, and the first step would be to try to provide uniformity to the different declarations that different countries had made under the 1995 UNIDROIT Convention.

314. *The representative of ICCROM* thanked the Secretary-General for his kind words and noted that the cooperation between the two Organisations was very beneficial to ICCROM, in particular in Latin America and in Africa. He mentioned a new programme called "looted heritage Africa" which might be an avenue of further cooperation. To conclude, he thanked UNIDROIT on behalf of the Director General of ICCROM, and looked forward to continuing the collaboration into future.

315. *The Governing Council congratulated the Secretariat for the growing number of States Party to the 1995 UNIDROIT Convention and took note of the activities undertaken and partnerships developed for its promotion with appreciation.*

Item 8: UNIDROIT Correspondents ([C.D. \(101\) 17 rev. 2](#))

316. *The President of UNIDROIT* opened the discussion on the renewal and appointment of new UNIDROIT Correspondents for the 2022-2025 term and invited the Governing Council to approve the list of candidates proposed by the Permanent Committee for Correspondents.

317. *The Secretary-General* recalled that UNIDROIT had received the mandate to revise the system of Correspondents at the 100th session of the Governing Council. The Secretariat had since established an internal structure within the Institute to ensure a seamless, continuous dialogue with Correspondents. One (or more) legal officers had been appointed to be responsible for Correspondents from each of the four regions of UNIDROIT (Africa, the Americas, the Asia-Pacific and Europe). These *Liaison Officers* had been tasked to channel institutional communications and to identify potential new candidates. He explained that the list of possible candidates had been sent to the Permanent Committee for Correspondents and that a meeting had been held on 9 June 2022 to discuss the list of candidates proposed. He noted that the Permanent Committee had agreed with all names proposed and had discussed the role of Governing Council Members within the Correspondents system. He recalled that a decision had been adopted which permitted all former Governing Council Members to automatically become Governing Council Members *ad honorem*, which essentially might have made the additional role of Correspondent redundant. Finally, he noted that the list of candidates presented for approval would continue to be enhanced and new names would be proposed during the next Governing Council session.

318. *Mr Gabriel* noted that the position of Governing Council Member *ad honorem* already covered the functions of Correspondents and agreed that two titles would therefore not be necessary. He noted that some former Governing Council Member's names had been added to the list of candidates to be renewed or appointed as Correspondents and suggested removing them.

319. *Ms Sabo* recalled the proposal of achieving 100 Correspondents by 2026 for the 100th anniversary of the Institute and asked if there was a limitation in the number of candidates to be appointed per region.

320. *The Secretary-General* recalled that the legal regime explaining the functions of Correspondents had been approved during the 100th session of the Governing Council and agreed that honorary Governing Council Members would not become Correspondents due to the similarity of the roles. Former Secretary-Generals would also become honorary Governing Council Members however, he drew the attention to one exception to be granted to Professor Herbert Kronke, who had agreed to be both a honorary Governing Council Member and Correspondent. The Terms of Reference and list of Correspondents for the 2022-2025 term would be posted on the website. In conclusion, he invited Governing Council Members to continue considering new individual candidates, as well as institutional correspondents.

321. *Sir Roy Goode* questioned if the sister organisations would be considered as institutional correspondents, and the Secretary-General clarified that the special relationship with UNIDROIT's sister organisations would continue, however the role of institutional correspondent would be targeted towards academic and private institutions rather than intergovernmental organisations.

322. *The Deputy Secretary-General* added that while having an academic background was important in a Correspondent a practitioner's background would also be highly appreciated when identifying new candidates.

323. *The Governing Council took note of the Secretariat's report on the steps undertaken to identify potential candidates for the role of UNIDROIT Correspondents and commended the Secretariat for the work done. The Council agreed to renew a number of active Correspondents and to appoint new Correspondents for the period June 2022 to May 2025, as recommended by the Permanent Committee for Correspondents.*

Item 9: UNIDROIT Academy ([C.D. \(101\) 18](#))

324. *The President of UNIDROIT* took the floor to introduce the activities of the Institute under the umbrella of the Academy. The concept of the Academy had been introduced at the 100th session of the Governing Council to convey how academia was a key component of the working method of the Institute, which set it apart somewhat from other international organisations. Academic input was crucial both for preparatory and exploratory work, but also to garner support for the activities of the Institute, and the concept of the UNIDROIT Academy had been introduced to incorporate that part of the Institute's work into its identity. Many MoUs had been signed with academic institutions to reinforce and reinstate ongoing cooperation, and to garner support for the Library among other things. Furthermore, since 2021, the concept of the Academy had been leveraged to obtain even more support for the activities that were going to lead up to the centennial celebrations of the Institute in 2026. The two Academic Projects (the Cape Town Convention Academic Project and the Cultural Property Academic Project) were already part of the Institute's work in this area and continued to contribute towards increasing the research and scholarship of UNIDROIT instruments.

325. The President went on to inform the Council of the fundraising that had already begun for a project to be carried out on the archives to digitise most of the archive and follow a structure that would be illustrated to the Council in the years leading up to the centennial celebrations. The amounts awarded and the results of the procedure were going to be assigned and made public at the end of June 2022, and cooperation had been offered by the head of a regional archive association and academic institutes specialised in this regard to provide pro-bono services to help coordinate the archive and restoration of the Institute's historical documents. Another line of activity was focussed on creating studies on the origins of the Institute, with a first publication scheduled for the end of 2022 on Professor Vittorio Scialoja, but also undertaking work on the profiles of some of the most

outstanding initial Members of the Governing Council, such as Ernst Rabel, with the purpose of identifying and underscoridng the process leading to the development of the ideas that had shaped the mandate of the Institute. This research was expected to unearth some interesting facets of this union of international law scholars with private international law scholars to gain an interesting understanding of how this contributed to the identity of the Institute.

326. The President explained the activities of the *Amici di UNIDROIT* network, which was intended to organise initiatives and conferences to raise awareness of and increase the involvement in the activities of the Institute of academics, jurists, civil servants and relevant personalities, with the ultimate scope of fundraising for the supporting activities of the Institute (e.g., internships, the Library, among others), seeking to revive the network of law firms that had supported the activities of the Institute in the past. The first events, due to the pandemic, had been local and targeted to the Roman law firms, and had been very well received by the legal community. The first international conference on Digital Platforms and Global Governance that had been organised under this initiative had also been very well received.

327. The International Summer School is intended to become a pillar of the Institute's work. The President announced that there would be 27 people attending the first edition from Africa, which had been selected as a target region by the funding entity – the Italian Ministry of Foreign Affairs and Cooperation. Judges, Ministerial Advisors and Counsellors from many African countries and intergovernmental organisations had been selected to form this community of people who would then be instrumental in the awareness and implementation of UNIDROIT instruments in their respective countries.

328. Finally, the President broached the topic of the UNIDROIT Chair Programmes. In addition to the UNIDROIT - Bank of Italy Chair Programme, which the Governing Council was already aware of, the President announced that the Italian Ministry of Foreign Affairs and Cooperation had also provided funding for a Chair Programme which had been earmarked to close the gender gap in the African region. Therefore, a call for applications had been issued and the Chair would be awarded over the summer months to a senior researcher, preferably from a developing country, to work on the projects concerning agricultural development and sustainability for one year, in particular the Legal Structure of Agricultural Enterprises project.

329. *Senior Legal Officer Carlo Di Nicola* introduced the topic of Cooperation with academic institutions, noting that since the last Governing Council session, the Secretariat had continued to pursue the finalisation and signature of formal agreements with a number of key academic partners. In particular, he noted that MoUs had been signed with: the UN Office for Outer Space Affairs in September 2021, the International Law Association / *Association de Droit International* (the Italian Branch) in November 2021, the University of Roma Tre Law Department in November 2021, the European Law Institute (ELI) in November 2021, and the "La Sapienza" Department of Law and Economics of Production Activities in December 2021.

330. *The Deputy Secretary-General Ms Anna Veneziano* further noted the recent proposal for a joint project with the University of Roma Tre on Contractual Change of Circumstances. She emphasised that the project would be conducted within the framework of the MoU signed with said university, which would fully support the project financially and administratively, incurring no burden on the Institute's resources. She noted that the Project addressed a classic contract law issue that had gained significant theoretical and practical importance in the last few years, and was expected to adopt an empirical, bottom-up approach to focus on the practice of specific contracts, rather than being limited to a comparative analysis of general contract laws.

331. The Secretariat had considered that the project was closely related to UNIDROIT's work on international contracts, particularly the UPICC, and the most recent evaluation by the Secretariat of the role of the Principles in solving contractual disruptions caused by the COVID-19 pandemic. As

noted in the Project Proposal, a contract-specific approach would be helpful in identifying the commercial sectors, including domestic ones, in which to “target the promotion and raise the profile” of the Principles. The Deputy Secretary-General further noted that the project showed connections and potential synergies with other UNIDROIT contractual projects where the different facets of contractual response to supervening circumstances were considered, such as the Legal Guide on Contract Farming and the Legal Guide on Agricultural Land Investment Contracts, as well as with the proposed projects focusing on the regulation of the supply chain. All in all, the project was a promising one and the Secretariat would report to the Governing Council in future sessions.

332. The Governing Council took note of the proposal received in the framework of the cooperation agreement with the Department of Law of Roma Tre University aimed at producing a non-legislative document focusing on the law and practice of specific contracts in selected jurisdictions and subsequent comparison with the UNIDROIT Principles of International Commercial Contracts.

333. *The President* thanked the Secretariat for this update which illustrated how the Secretariat supported the general activity of the Institute through strategic partnerships with key institutions.

334. *Ms Bettina Maxion* (UNIDROIT Secretariat, Head Librarian) reported on the Library and Research Activities noting the post-lockdown revitalisation of the Library space. The UNIDROIT Research Scholarship and Internship Programme was important to promote the Institute’s activities on an extra-budgetary base relying on sponsors and donors. It was noted that since the end of 2021, 48 interns coming from 24 countries had collaborated with the current UNIDROIT’s projects and more than 40 researchers had been invited on an independent basis. UNIDROIT had succeeded in funding seven scholarships, five of which had been allocated from UNIDROIT’s General Scholarship Fund, and two from the Sir Roy Goode Scholarships fund.

335. As of June 2022, 16 interns and 18 researchers had already been hosted in 2022, with 29 more interns and 19 more researchers expected to arrive by the end of the year. She noted the cooperation with other Roman and international libraries, particularly with La Sapienza and Max Planck Institute in Hamburg and Heidelberg. Apart from that, UNIDROIT’s Library continued to expand and digitalise its collections upgrading the Library’s catalogues.

336. *Mr Brydie-Watson* further elaborated on the UNIDROIT Research Scholarship and Internship Programme and noted a significant increase in the number of incoming interns and researchers. Mr William Brydie-Watson highlighted that the extremely competitive extra-budgetary programme currently only had available funding for 25 per cent of accepted applicants, and that the Institute aimed to raise more funds for these activities to improve their inclusivity and diversity.

337. *Ms Lena Peters* recalled that document C.D. (101) 18 contained a report on publications on pages 9 to 13 and a table annexed to the document summarising sales of publications from 2013 to 2021. She pointed out that the monographs published on any given year depended on what had been finalised either during project development or related to previously adopted instruments of the Institute, as well as on the amount of work required to edit and produce the publication. The number of publications therefore varied, at times quite considerably. Whereas in 2021 the English version of the *ELI/UNIDROIT Model Rules of European Civil Procedure* had been published by Oxford University Press, the *UNCITRAL, HCCH and UNIDROIT Legal Guide to Uniform Instruments in the Area of International Commercial Contracts, with a Focus on Sales* had been published by the United Nations, and the *UNIDROIT/IFAD Legal Guide on Agricultural Land Investment Contracts* had been published by UNIDROIT, the first two of which were being translated by independent experts, so far in 2022 only one volume had been published, namely the Fifth Edition of the *Official Commentary on the Cape*

*Town Convention and Aircraft Protocol*¹ by Professor Sir Roy Goode, which he would be presenting to Council Members at the end of the Council meeting.

338. Document C.D. (101) 18 contained information on the circulation of the *Uniform Law Review*, the revenue from its sales, and the consultation of articles. The greatest novelties were to be found in relation to its production. One of the consequences of the pandemic had been that publishers such as *Oxford University Press* had found that a new online method for submission and treatment of articles, including the peer review system, had to be introduced quicker than they had originally expected. Instead of over a five-year period, it had become necessary to introduce the changes in five months. The OUP system was the ScholarOne submission system, which featured an online author submission rather than by email; online peer reviews; automated delivery and alerting to production; automatic email alerting of due dates for all users (including the Editorial Board); central repository and backup for files, correspondence, and metadata; online access by any internet browser; customisable email templates; clear audit trailing of internal and external correspondence; and version control of the manuscript and all reviews and correspondence.

339. Two meetings to prepare for the conversion to ScholarOne had been held, and the OUP were currently preparing a separate website for the *Uniform Law Review*, which would be inaugurated at the beginning of 2023. There would be a period of testing of the site before it was adopted in its entirety, peer reviewers would also be contacted to ensure that they were fully aware of the system and were willing to continue to act as peer reviewers for the *Uniform Law Review*. The final intention of OUP, as of other publishers, was to eventually shift all of their production onto online products. All those that received free copies, either as Depositary Libraries or in exchange for publications of their own, would be asked to move to an electronic platform from the paper copies they were presently receiving.

340. *The Governing Council took note of developments in all the activities of the Academy, including the Academic Projects, Academic Institutes, UNIDROIT International Summer School, UNIDROIT Chair Programmes, UNIDROIT Library and research activities, Cooperation with academic institutions, and UNIDROIT Publications, and expressed its support for the Secretariat's initiatives in these fields.*

Item 10: Communications strategy and social media outreach (C.D. (101) 19)

341. *The Secretary-General* introduced the agenda item and briefly recalled that a lot had been invested in terms of human rather than financial resources for the development of the Communication Strategy of the Institute. In the absence of an existing budget to externalise these activities, the Institute relied on its staff for these activities, as an additional part of their workload. The work was therefore quite a homemade product, which, however, was yielding spectacular results. While it was not the paramount objective of the Institute to gain a maximum amount of followers, raising awareness on its activities was important and UNIDROIT had learned a lot from its institutional partners in this respect.

342. *Ms Valentina Viganò* referred to the website and shared the screen for the benefit of all Governing Council Members, recalling that while social media and the website had traditionally been addressed separately, the intention of the document before Governing Council Members was to illustrate the new and integrated approach. During the first nine months of the website, the focus had been on troubleshooting the immediate issues that had been flagged by staff members. Mr Stefano Muscatello and Ms Isabelle Dubois (UNIDROIT Secretariat), who had been designated as

¹ *Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol thereto on Matters Specific to Aircraft Equipment*, UNIDROIT 2022. Available on [UNIDROIT's website](#).

administrators of the website, had been in constant contact with the web developers to address the issues concerning document consultation, and consultations on the status of the conventions.

343. The majority of training had been delivered to the designated administrators (20 out of 30 hours so far), and the remaining hours allocated within the budget would be delivered to the other members of staff to make them more and more independent in their contributions to the website news items and their project pages. Ms Viganò went on to illustrate the additions to the website, namely the Academy section, which provided a more immediate illustration of the pillars that made up the Academy's activities. She stated that aim for the coming months was to increase traffic between the Institute's website and social media channels and vice-versa, to convey new users to the website but also to make it possible for website users to share across social media channels.

344. *Mr Hameed* detailed the Institute's work on social media. It was recalled that UNIDROIT's social media programme had a five-fold purpose: (i) raising UNIDROIT's public profile and online awareness of its current projects; (ii) promoting upcoming events and encouraging participation from relevant stakeholders; (iii) allowing researchers, visiting professionals, interns, and other stakeholders to connect with each other and maintain a connection with UNIDROIT; (iv) serving as a dynamic channel to communicate with the global community interested in UNIDROIT's work; and (v) allowing UNIDROIT to widely advertise vacancies, internship and scholarship opportunities.

345. He added that UNIDROIT's social media channels had continued to perform well since the last meeting of the Governing Council. As of 1 April 2022, the Institute had more than 20,302 followers on LinkedIn, 5,016 followers on Facebook, 1,660 followers on Twitter, and 325 subscribers on YouTube. In relation to the Institute's "reach" on social media, over the past twelve months UNIDROIT content was displayed on news feeds more than 784,00 times on LinkedIn, around 240,000 times on Twitter, and delivered 84,153 times to people on Facebook. All Members of the Governing Council were encouraged to engage with the social media channels to increase the amount of awareness being generated for UNIDROIT instruments.

346. *Ms Sabo* emphasised the importance of the social media strategy and the value of collecting data on its impact. She went on to submit a request for the pdf files present on the website to be automatically opened in a separate tab or window. Sir Roy Goode, emphasising the importance of this project, queried whether a function could be set up for fundraising, referencing the activities of the "Friends of UNIDROIT" initiative Walter Rodinò had begun many years ago, to which the President replied that a section of the website had been drafted with this in mind. The draft section, which was still being reviewed, would provide the description of all the events that were being held under this initiative, including pictures and videos. Ms Viganò reiterated that that was indeed the case, and added that, as a possible additional avenue to raise funds, the website could also potentially add an e-commerce tab to the publications section, providing a more immediate channel for its users rather than the traditional order form.

347. *Mr Leinonen* took the floor and, having complimented the Secretariat for the work that had been carried out, queried if a function could be installed to make it possible for all the documents for a given meeting to be downloaded at once.

348. *The representative of the HCCH* took the floor to state that the HCCH was committed to raising awareness and improving its outreach strategy, pointing to an opportunity for cooperation between the sister organisations together with UNCITRAL. This was both to raise awareness and also to increase democratic access to documentation and consequently the awareness and implementation of the rule of law. The HCCH was still learning, and was currently focussed on aspects such as the use of approved language to market their instruments across social media channels. The HCCH commended the work of UNIDROIT on conversion rates and noted that it had a lot to learn from experience. The representative of HCCH invited the Secretariat to increase and regularise exchanges

with the Permanent Bureau, to establish effective drivers to the respective instruments, such as the joint promotion of events, interrelated projects and joint initiatives.

349. The representative of UNCITRAL took the floor and commended the work of UNIDROIT on its new corporate identity. He went on further to suggest that future work to share among the sister organisations was to increase the hyperlinks between the instruments of the three organisations (UNIDROIT; HCCH; and UNCITRAL).

350. In thanking the representatives of the HCCH and UNCITRAL, the Secretary-General highlighted the possibility of creating a joint identity to represent the three sister organisations in the future and expressed a will to immediately follow up on the suggestion to increase hyperlinks between instruments and to dedicate a part of the website to joint instruments.

351. The President joined in agreement with these suggestions, and added that another avenue to explore, subject to quality control, were the presentations of the instruments of the sister organisations in different languages.

352. *The Governing Council took note of the activities of the Secretariat and commended the Communications and Outreach Strategy. The Council provided feedback on aspects in which the website could be improved, based on their user experiences.*

Item 11: Administrative matters: Preparation of the draft Budget for the 2023 financial year ([C.D. \(101\) 20](#))

353. *The Secretary-General* introduced the topic, with reference to document C.D. (101) 20, noting that the draft had already been approved by the Finance Committee at its 93rd session. He explained that the Governing Council was the official body to draft the Budget based on the Finance Committee's recommendation. The draft Budget would be circulated to Member States for comments, and subsequently presented to the Finance Committee at its 94th session. Based on the recommendations of the latter, it would subsequently be presented to the General Assembly at its 81st session for formal adoption.

354. He highlighted two increases in the Budget concerning the Committees of Experts as well as Official Travel, noting that this increase was to reflect the fact the Institute was running six high priority projects simultaneously, without affecting the overall fiscal balance. He noted that UNIDROIT covered the cost of the experts' expenses incurred in coming to Rome, and in a bid to contain costs to a minimum, he encouraged the Governing Council Members to request that, where possible, their respective governments either wholly or partially cover the costs for experts coming from their countries.

355. *Ms Sabo* remarked that she had previously reviewed the document at the Finance Committee and welcomed it as a good budget, noting that the increases to meeting costs were necessary and appropriate. She noted that the budget had increased and this was due to an increase in revenues, and that the increases were made to categories which could decrease in future if the revenues were to fall, which was a positive thing. She noted that the Institute's Secretariat was a small one with a heavy workload, and she welcomed ways to try to increase staffing levels and find the resources to do so, all the while maintaining a policy of zero nominal growth.

356. *The Secretary-General* noted with regard to the staffing costs in terms of both salaries and social security costs that the Institute's salary scale was linked with the United Nations' system which implied automatic yearly increases, whereas the contributions did not increase year upon year, with this year's exceptional increase in revenues being attributable to the release of the 5th edition of the Official Commentary on the Aircraft Protocol. He noted that the avenues for addressing the longer-term financial sustainability of the Institute beyond the next few years would require some technical

assistance from outside experts, but that in the coming two or three years, the natural turnover of staff due to retirements and staffing changes meant that the situation was tenable without needing to use the available financial buffer.

357. *Mr Meier* noted the importance of ensuring the long-term financial viability of the Institute, especially considering the pressures of inflation on budget items such as salaries and social security costs, and welcomed initiating a discussion within the Member States' governments at an early stage.

358. *Ms Sabo* encouraged the Secretariat to begin discussions within the Finance Committee regarding the possible need to increase the budget in the future. She further noted that, while in other international organisations there was sometimes a view that one method for increasing the budget was to grow the number of Member States, she cautioned that this was not necessarily a reliable manner in which to do so, in part because those new Member States would be low in the Contributions Chart, and in part because the new Member States increased the burden placed on the Secretariat's limited resources.

359. *The Secretary-General* noted that the Secretariat considered expansion of membership to be desirable for a number of reasons, and that while the main purpose of enlarging membership was not to increase the budget, the additional income would nevertheless be welcome.

360. *The Governing Council considered the draft Budget for the 2023 financial year, agreed to deem it drafted by the Council, and authorised the Secretariat to transmit it to Member States without amendments.*

Item 12: Date and venue of the 102nd session of the Governing Council ([C.D. \(101\) 1 rev. 4](#))

361. *The Governing Council agreed that the 102nd session of the Governing Council should be held either on May 10-12 or May 24-26, 2023, with an expressed preference for May 10-12, 2023, subject to the Secretariat's confirmation.*

Item 13: Any other business

362. *The President* invited the Governing Council to ratify the decision of the Permanent Committee to reappoint Professor Anna Veneziano as Deputy Secretary-General of UNIDROIT.

363. *The Council expressed its gratitude to Professor Anna Veneziano and unanimously recommended her reappointment as Deputy Secretary-General.*

ANNEXE I**LIST OF PARTICIPANTS /
LISTE DES PARTICIPANTS****IN PERSON - REMOTELY**(Rome, 8 – 10 June 2022 / *Rome, 8 – 10 juin 2022*)**MEMBERS OF THE GOVERNING COUNCIL
MEMBRES DU CONSEIL DE DIRECTION**

Ms Maria Chiara MALAGUTI	President of UNIDROIT / <i>Présidente d'UNIDROIT</i>
Ms Stefania BARIATTI (<i>in person</i>)	Professor of International Law School of Law Università degli Studi di Milano Milan (Italy)
Mr Hans-Georg BOLLWEG (<i>remotely</i>)	Head of Division Federal Ministry of Justice Berlin (Germany)
Ms Baiba BROKA (<i>in person</i>)	Adviser to the Minister of Environmental Protection and Regional Development Riga (Latvia)
Mr Yusuf ÇALIŞKAN (<i>in person</i>)	Professor of Law İbn Haldun University School of Law İstanbul (Turkey)
Mr Alfonso-Luís CALVO CARAVACA (<i>remotely</i>)	Professor of Private International Law Carlos III University of Madrid Madrid (Spain)
Ms Eugenia G. DACORONIA (<i>in person</i>)	Attorney - at - law Professor of Civil Law National and Kapodistrian University of Athens Law School Athens (Greece)
Mr Eesa Allie FREDERICKS (<i>remotely</i>)	Academic Deputy Director Research Centre for PIL in Emerging Countries University of Johannesburg Johannesburg (South Africa)
Mr Henry D. GABRIEL (<i>in person</i>)	Professor of Law School of Law Elon University North Carolina (United States of America)

Mr Arthur Severijn HARTKAMP (<i>in person</i>)	former Procureur-Général at the Supreme Court of The Netherlands; Professor of European Private Law Radboud University, Nijmegen Den Haag (The Netherlands)
Mr Inho KIM (<i>remotely</i>)	Professor of Law School of Law Ewha Womans University Seoul (Republic of Korea)
Mr Hideki KANDA (<i>remotely</i>)	Professor Law School Gakushuin University Tokyo (Japan)
Mr Patrick KILGARRIFF (<i>in person</i>)	Legal Director Department for Business, Energy and Industrial Strategy London (United Kingdom)
Mr Alexander S. KOMAROV (<i>remotely</i>)	Professor Head of International Private Law Chair Russian Academy of Foreign Trade Moscow (Russian Federation)
Mr Antti T. LEINONEN (<i>in person</i>)	Director General Law Drafting Department (Civil Law) Ministry of Justice Helsinki (Finland)
Mr Ricardo L. LORENZETTI (<i>in person</i>)	Chief Justice Supreme Court of Justice Presidente de la Corte Suprema de Justicia de la Nación Buenos Aires (Argentina)
M. Niklaus D. MEIER (<i>in person</i>)	co-chef de l'Unité de droit international privé Office fédéral de la Justice Bern (Suisse)
Mr Attila MENYHÁRD (<i>in person</i>)	Professor of Civil Law Head of department (ELTE Law Faculty Civil Law Department) ELTE Állam- és Jogtudományi Kar Budapest (Hungary)
Mr José Antonio MORENO RODRÍGUEZ (<i>in person</i>)	Professor of Law Attorney Asunción (Paraguay)

Ms Monika PAUKNEROVÁ
(*in person*)

Professor of Private International Law and
International
Department of Commercial Law
Charles University, Faculty of Law
Prague 1 (Czech Republic)

Mr Jean-François RIFFARD
(*remotely*)

Doyen de l'École de Droit
Directeur du Master Droit civil
Université Clermont Auvergne – École de Droit
Clermont-Ferrand Cedex 1 (France)

Representing Ms Bénédicte FAUVARQUE-COSSON

Ms Kathryn SABO
(*in person*)

General Counsel
Constitutional, Administrative and International
Law Section
Department of Justice Canada
Ottawa, Ontario (Canada)

Mr Jorge SÁNCHEZ CORDERO
(*in person*)

Director of the Mexican Center of Uniform Law
Professor
Notary public
Mexico City (Mexico)

Mr Luc SCHUERMANS
(*remotely*)

Professor Emeritus
Universiteit Antwerpen
Law School
Antwerpen (Belgium)

Ms SHI Jingxia
(*remotely*)

Professor of Law
Dean, School of Law
China University of International Business &
Economics (UIBE)
Director of UIBE International Law Institute (ILI)
Beijing (People's Republic of China)

Ms Carmen Tamara UNGUREANU
(*in person*)

Professor of Law
Doctoral Supervisor - International Trade Law
"Alexandru Ioan Cuza" University
Iasi (Romania)

* * *

OSBSERVERS / OBSERVATEURS

BANK OF ITALY / *BANQUE D'ITALIE*
(*remotely*)

Mr Marino Ottavio PERASSI
Avvocato Generale
Rome (Italy)

EUROPEAN BANKING INSTITUTE
(*remotely*)

Mr Marco LAMANDINI
Academic Vice Chair
Frankfurt am Main (Germany)

EUROPEAN LAW INSTITUTE (ELI)
(remotely)

Ms Vanessa WILCOX
Secretary General
Vienna (Austria)

FRANCE / Ministry of Justice - *Ministère de la Justice*
(in person)

Mr Guillaume VIEILLARD
Juge
Ministère de la Justice
Paris (France)

CHAIR OF THE UNIDROIT GENERAL ASSEMBLY
(ITALY) / *PRÉSIDENT DE L'ASSEMBLÉE GÉNÉRALE D'UNIDROIT (ITALIE)*
(in person)

Mr Stefano ZANINI
Minister Plenipotentiary
Head of the Service for Legal Affairs
Diplomatic Disputes and International Agreements
Ministry of Foreign Affairs and International
Cooperation
Italy

Mr Davide MENEGHETTI
Ufficio III – Legal Affairs
Ministry of Foreign Affairs and International
Cooperation
Italy

CHAIR OF THE UNIDROIT FINANCE
COMMITTEE (UNITED STATES OF AMERICA) /
PRÉSIDENT DE LA COMMISSION DES FINANCES D'UNIDROIT (ÉTATS-UNIS D'AMÉRIQUE)
(remotely)

Mr Samuel F. ROTHENBERG
Political-Economic Officer - Alternate Permanent
Representative
United States Mission to the UN Agencies in Rome
Rome (Italy)

HAGUE CONFERENCE ON PRIVATE
INTERNATIONAL LAW (HCCH) / *CONFERENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVE (HCCH)*
(in person)

Ms Gerardine GOH ESCOLAR
Deputy Secretary-General
The Hague (Netherlands)

INTERGOVERNMENTAL ORGANISATION FOR
INTERNATIONAL CARRIAGE BY RAIL (OTIF) /
ORGANISATION INTERGOUVERNEMENTALE POUR LES TRANSPORTS INTERNATIONAUX FERROVIAIRES (OTIF)
(remotely)

Ms Lunesterline ANDRIAMAHATAHITRY
Head
Administration and Finance Department
Berne (Switzerland)

ICC INSTITUTE OF WORLD BUSINESS LAW /
INSTITUT DROIT DES AFFAIRES DE LA CCI
(remotely)

Mr Eduardo SILVA ROMERO
President
Paris (France)

INTERNATIONAL CENTRE FOR THE STUDY OF
THE PRESERVATION AND RESTORATION OF
CULTURAL PROPERTY (ICCROM) / *CENTRE INTERNATIONAL D'ÉTUDES POUR LA CONSERVATION ET LA RESTAURATION DES BIENS CULTURELS (ICCROM)* (in person)

Mr Joe KING
Senior Director
Rome (Italy)

INTERNATIONAL DEVELOPMENT LAW
ORGANIZATION (IDLO) / *ORGANISATION
INTERNATIONALE DE DROIT DU
DEVELOPPEMENT (OIDD)*
(in person & remotely)

Ms Liliana DE MARCO COENEN
Director of External Relations and Partnerships

Ms Flaminia BATTISTELLI
Partnerships and Governance Officer

Ms Silvia MAZZARELLI
Partnerships and Governance Officer

INTERNATIONAL FUND FOR AGRICULTURAL
DEVELOPMENT (IFAD) / *FONDS
INTERNATIONAL DE DEVELOPPEMENT
AGRICOLE (FIDA)*
(remotely)

Mr Ebrima CEESAY
Legal Officer
Rome (Italy)

INTERNATIONAL SWAPS AND DERIVATIVES
ASSOCIATION (ISDA)

Mr Peter WERNER
Senior Counsel
London (United Kingdom)

Excused

UNIDROIT FOUNDATION / *FONDATION
d'UNIDROIT*
(remotely)

Ms Louise GULLIFER
Rouse Ball Professor of English Law
University of Cambridge (United Kingdom)
*Member of the Board of Governors of the UNIDROIT
Foundation / Membre du Conseil d'Administration
de la Fondation d'UNIDROIT*
Mr Jeffrey WOOL
President

UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW (UNCITRAL) /
*COMMISSION DES NATIONS UNIES POUR LE
DROIT COMMERCIAL INTERNATIONAL
(CNUDCI)*
(in person)

Ms Anna JOUBIN-BRET
Secretary
International Trade Law Division
Director
Office of Legal Affairs
Vienna (Austria)

Mr José Angelo ESTRELLA FARIA
Senior Legal Officer and Head
Technical Assistance Section
International Trade Law Division
Office of Legal Affairs
Vienna (Austria)

UNITED NATIONS EDUCATIONAL, SCIENTIFIC
AND CULTURAL ORGANIZATION (UNESCO) /
*ORGANISATION DES NATIONS UNIES POUR
L'ÉDUCATION, LA SCIENCE ET LA CULTURE
(UNESCO)*
(remotely)

Ms Krista PIKKAT
Director of Culture and Emergencies
UNESCO
Paris (France)

WORLD FOOD PROGRAMME (WFP)/
PROGRAMME ALIMENTAIRE MONDIAL (PAM)
(remotely)

Ms Rachel EVERS
Deputy General Council and Deputy Director
Legal Office
Rome (Italy)

WORLD INTELLECTUAL PROPERTY
ORGANIZATION (WIPO) / ORGANISATION
MONDIALE DE LA PROPRIÉTÉ INTELLECTUELLE
(OMPI)
(remotely)

Mr Victor OWADE
External Relations and Partnerships Officer
Global Challenges and Partnerships Sector
External Relations Division
Geneva (Switzerland)

* * *

INDIVIDUAL OBSERVERS / OBSERVATEURS INDIVIDUELS

Mr Marc-André RENOLD
(in person)

Professeur ordinaire
Université de Genève (Suisse)
Directeur
Centre Universitaire du droit de l'art (CDA)

Sir Roy GOODE
(in person)

Emeritus Professor of Law
United Kingdom

UNIDROIT

Ms Maria Chiara MALAGUTI
Mr Ignacio TIRADO
Ms Anna VENEZIANO

President / Présidente
Secretary-General / Secrétaire Général
Deputy Secretary-General / Secrétaire Générale
adjointe

Ms Lena PETERS

Principal Legal Officer and Editor of the Uniform
Law Review/ Fonctionnaire principale & Chargée de
la rédaction, Revue de droit uniforme

Ms Marina SCHNEIDER

Principal Legal Officer and Treaty Depositary /
Juriste principale & Dépositaire des traités

Mr William BRYDIE WATSON

Senior Legal Officer / Fonctionnaire principal

Mr Carlo DI NICOLA

Senior Legal Officer / Fonctionnaire principal

Ms Philine WEHLING

Legal Officer / Fonctionnaire

Ms Priscila PEREIRA DE ANDRADE

Legal Officer / Fonctionnaire

Ms Myrte THIJSSEN

Legal Officer / Fonctionnaire

Ms Michelle FUNG

Legal Officer / Fonctionnaire

Ms Amelia LO

Legal Officer / Fonctionnaire

Mr Chen MIAO

Legal Officer / Fonctionnaire

Mr Hamza HAMEED

Legal Consultant / Consultant juridique

Ms Bettina MAXION

Librarian / Bibliothécaire

Ms Teresa RODRÍGUEZ DE LAS HERAS

Consultant / Consultante

Ms Valentina VIGANÒ

Personal Assistant to Secretary-General / Assistante
personnelle du Secrétaire Général

ANNEXE II**ANNOTATED AGENDA**

1. Adoption of the annotated draft agenda (C.D. (101) 1 rev. 4)
2. Appointment of first and second Vice Presidents of the Governing Council (C.D. (101) 1 rev. 4)
3. Reports
 - (a) Annual Report 2021 (C.D. (101) 2)
 - (b) Report on the UNIDROIT Foundation (C.D. (101) 3)
4. Proposals for the New Work Programme for the triennial period 2023-2025 (C.D. (101) 4 rev.)
5. Ongoing legislative activities
 - (a) Model Law on Factoring (C.D. (101) 5)
 - (b) Best Practices for Effective Enforcement (C.D. (101) 6)
 - (c) Digital Assets and Private Law (C.D. (101) 7)
 - (d) Model Law on Warehouse Receipts (C.D. (101) 8)
 - (e) Bank Insolvency (C.D. (101) 9)
 - (f) Legal Structure of Agricultural Enterprises (C.D. (101) 10)
 - (g) Principles of Reinsurance Contracts (C.D. (101) 11)
 - (h) Private Art Collections (C.D. (101) 12)
6. International Interests in Mobile Equipment:
 - (a) Implementation and status of Cape Town Convention and the Aircraft Protocol
 - (b) Implementation and status of the Luxembourg Rail Protocol and of the Space Protocol (C.D. (101) 13)
 - (c) Implementation and status of the Protocol on Matters specific to Mining, Agricultural and Construction Equipment (MAC Protocol) (C.D. (101) 14)
 - (d) Appointment of a Supervisory Authority for the MAC Protocol registry (C.D. (101) 15)
7. International Protection of Cultural Property: Implementation and status of the 1995 Convention (C.D. (101) 16)
8. UNIDROIT Correspondents (C.D. (101) 17 rev. 2)

9. UNIDROIT Academy (C.D. (101) 18)
 - (a) UNIDROIT Academic Projects
 - (b) Academic Institutes
 - (c) UNIDROIT International Summer School
 - (d) UNIDROIT Chair Programmes
 - (e) UNIDROIT Library and research activities
 - (f) Cooperation with academic institutions
 - (g) UNIDROIT Publications
10. Communications strategy and social media outreach (C.D. (101) 19)
11. Administrative matters: Preparation of the draft Budget for the 2023 financial year (C.D. (101) 20)
12. Date and venue of the 102nd session of the Governing Council (C.D. (101) 1 rev.4)
13. Any other business
14. Launch of the 5th Edition Official Commentary on the Cape Town Convention on International Interests in Mobile Equipment and Protocol thereto on Matters Specific to Aircraft

ANNOTATIONS

1. The 101st session of the Governing Council will be held at the seat of UNIDROIT, with the possibility of participating via video conference, on 8-10 June 2022. In order to accommodate participation across as many time zones as possible, meeting hours shall be from 10 a.m. to 6 p.m. CEST.

Item No. 2 – Appointment of first and second Vice Presidents of the Governing Council

2. At its annual sessions since 1977, the Governing Council has elected a First and a Second Vice-President who, in accordance with Article 11 of the Regulations of the Institute, will hold office until the following ordinary session, which is convened once a year. At present, the post of First Vice-President is occupied by the doyen of the Council and that of Second Vice-President by one of the most senior Council Members, the latter on the basis of the criterion of rotation since 1994.

Item No. 12 – Date and venue of the 102nd session of the Governing Council

3. The Governing Council may wish to consider holding its 102nd session on either 17-19 May, 24-26 May, or 7-9 June 2023.